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8 -and-

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15 *Attorneys for Enigma Securities Limited*

16 **UNITED STATES BANKRUPTCY COURT**

17 **FOR THE DISTRICT OF NEVADA**

18  
19 IN RE:

20 CASH CLOUD INC., dba Coin Cloud

21  
22 Debtor.  
23  
24

Case No.: BK-S-23-10423-MKN

Chapter 11

Hearing Date: October 16, 2023  
Hearing Time: 9:30 a.m. (PT)

25  
26 **DECLARATION OF ANDREW KISSNER, ESQ. IN SUPPORT OF ENIGMA**  
27 **SECURITIES LIMITED'S REPLY IN SUPPORT OF APPLICATION FOR**  
**ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

**SHEA LARSEN**  
1731 Village Center Circle, Suite 150  
Las Vegas, Nevada 89134  
(702) 471-7432

1 I, Andrew Kissner, Esq., do declare the following under penalty of perjury:

2 1. I am over the age of 18 and competent to testify as to the matters set forth herein.

3 2. I am counsel of record for Creditor Enigma Securities Limited (“Enigma”) and I make  
4 this Declaration in support of *Enigma Securities Limited’s Reply in Support of Application for*  
5 *Allowance and Payment of Administrative Expense Claim* (the “Reply”) filed concurrently with this  
6 Declaration.

7 3. Any capitalized terms not otherwise defined in this Declaration are defined as set  
8 forth in the Reply.

9 4. On July 17, 2023, I caused the Cash Cloud, Inc. dba Coin Cloud (the “Debtor”) to be  
10 served with the *Notice of Issuance of Subpoena to Produce Documents, Information, or Objects or*  
11 *to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)* [Docket No. 850]  
12 (the “Rule 2004 Subpoena”).

13 5. On July 20, 2023, I received an email from counsel to the Debtor informing me that  
14 the purchase price to be paid by Heller for the Debtor’s DCMs would be reduced by 10%. A true  
15 and correct copy of that email is attached as Exhibit 1 hereto.

16 6. On July 31, 2023, I caused the Official Committee of Unsecured Creditors (the  
17 “Committee”) to be served with *Enigma Securities Limited’s First Set of Requests for Production to*  
18 *Official Committee of Unsecured Creditors* (the “Committee RFPs”).

19 7. On August 16 and 17, 2023, I received productions of documents from the Debtor in  
20 response to the Rule 2004 Subpoena. Included in that production was an Excel file with Bates stamp  
21 “CC\_0003123” containing the Debtor’s analysis in connection with the distribution of sale proceeds.  
22 A true and correct copy of that file is attached as Exhibit 2 hereto.

23 8. On August 30, 2023, I received a production of documents from the Committee in  
24 response to the Committee RFPs. Included in that production was a PDF file with Bates stamp  
25 “UCC\_0000088” that contains an email from counsel for the Debtor to counsel for the Committee,  
26 dated April 12, 2023. A true and correct copy of that file is attached as Exhibit 3 hereto. Also  
27 included in that production was a PDF file with Bates stamp “UCC\_0000238” that contains an email  
28

**SHEA LARSEN**

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1 exchange between counsel for the Debtor and counsel for the Committee, dated June 8, 2023. A  
2 true and correct copy of that file is attached as **Exhibit 4** hereto. A third PDF file with Bates stamp  
3 “UCC\_0000244” was included in that production, and contains an email from counsel for the Debtor  
4 to counsel for the Committee, dated June 27, 2023. A true and correct copy of that file is attached  
5 as **Exhibit 5** hereto.

6 9. On August 22, 2023, I took the deposition of Tanner James as the Debtor’s  
7 representative pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure (the “Federal  
8 Rules”). A true and correct copy of the final transcript of the James deposition is attached as  
9 **Exhibit 6** hereto.

10 10. On August 23, 2023, I took the deposition of Daniel Moses as the Debtor’s  
11 representative pursuant to Federal Rule 30(b)(6). A true and correct copy of the final transcript of  
12 the Moses deposition is attached as **Exhibit 7** hereto.

**SHEA LARSEN**  
1731 Village Center Circle, Suite 150  
Las Vegas, Nevada 89134  
(702) 471-7432

1 I declare under penalty of perjury of the laws of the United States that the foregoing is true  
2 and correct.

3 DATED this 18th day of September, 2023.

4  
5 /s/ Andrew Kissner  
6 ANDREW KISSNER, ESQ.  
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**SHEA LARSEN**  
1731 Village Center Circle, Suite 150  
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**CERTIFICATE OF SERVICE**

1.  
On September 18, 2023, I served **DECLARATION OF ANDREW KISSNER, ESQ. IN SUPPORT OF ENIGMA SECURITIES LIMITED'S REPLY IN SUPPORT OF APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM** in the following manner:

☒ a. ECF System: Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities.

☐ b. United States mail, postage fully prepaid:

☐ c. Personal Service:

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handling the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. By fax transmission:

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 18, 2023

By: Bart K. Larsen

# **EXHIBIT 1**

**Guido, Laura**

---

**From:** Williams, Zachary <ZWilliams@foxrothschild.com>  
**Sent:** Thursday, July 20, 2023 11:21 AM  
**To:** Kissner, Andrew; mdweinberg@cgsh.com; Mertz, Justin M (14972); Lee, Gary S.; rworks@mcdonaldcarano.com; Kinas, Rob; Severance, Alexander Gerard; Tucker, Michael; LoTempio, Catherine; gayda@sewkis.com; Matott, Andrew; Higgins, Mason A (21705)  
**Cc:** Axelrod, Brett; Daniel Moses; Tanner James; McPherson, Jeanette E.; Noll, Audrey; Chlum, Patricia M.  
**Subject:** FW: Coin Cloud / Heller Capital APA - Purchase Price Reduction  
**Attachments:** Copy of Coin Cloud Physical Count and PP Adj\_V3-C.xlsx

**External Email**

---

All,

Please see the email below from Heller's counsel. Pursuant to the terms of the APA, Heller will be requiring a 10% purchase price reduction based on the actual number of machines in existence and their operating status.

Feel free to reach out with any questions.

Thanks,

**Zach Williams**

**Associate | Business Solutions, Financial Restructuring & Bankruptcy**

**Fox Rothschild LLP**

One Summerlin  
1980 Festival Plaza Drive, Suite 700  
Las Vegas, NV 89135  
(702) 427-2975 - Cell  
(702) 699-5917 - Office  
(702) 597-5503 - fax

[ZWilliams@foxrothschild.com](mailto:ZWilliams@foxrothschild.com)

[www.foxrothschild.com](http://www.foxrothschild.com)

---

**From:** Erin Farabaugh <efarabaugh@hellercg.com>  
**Sent:** July 19, 2023 2:45 PM  
**To:** Williams, Zachary <ZWilliams@foxrothschild.com>; Smith, Tyler M. <tmsmith@foxrothschild.com>  
**Cc:** Axelrod, Brett <BAxelrod@foxrothschild.com>; Petrone, Joseph N. <JPetrone@foxrothschild.com>; Davidson, Clayton <CDavidson@mcneeslaw.com>; Austin Haller <ahaller@powercoinco.com>; Neal Leininger <nleininger@hellercg.com>  
**Subject:** [EXT] RE: Coin Cloud / Heller Capital APA - Purchase Price Reduction

Zach and Tyler,

Purchaser has completed enough of its diligence process, to confirm that the Purchase Price Adjustment set forth in Section 1.8 of the Asset Purchase Agreement is applicable to this transaction. By way of further detail, based on

Purchaser's diligence in the Morning Star Storage location, you will see from review of the attached that of the 428 DCMs identified on Schedule 2.1(a) for that location, only 235 machines were physically in the warehouse that matched the description on Schedule 2.1(a). Our diligence team did find another 125 DCMs (not reflected on Schedule 2.1(a)) in that warehouse location; *however*, out of the total number of machines in the warehouse (360), 243 are not in Working Condition (as defined in the APA).

We have attached a spreadsheet for this location which identifies the following for this warehouse location:

1. For each DCM listed on Schedule 2.1(a):
  - a. notation on whether or not it is held at the warehouse;
  - b. notation on whether or not it is in Working Condition; and,
  - c. if not in Working Condition, our notes related to the same.
2. For each DCM found in the warehouse (but not listed on Schedule 2.1(a)):
  - a. notation on whether or not it is in Working Condition; and,
  - b. if not in Working Condition, our notes related to the same.

\*Please note as reflected on the attached, we limited our description of the DCM to state "No PC" as that component part alone would exceed the \$500 threshold for determining Working Condition. It is notable, however, that a number of DCMs have additional damage, or missing component parts.

Given that the number of DCMs in the warehouse varies by more than 5% of those identified on Schedule 2.1(a), the 10% reduction of Purchase Price is applicable. Further, even if we were to include the additional DCMs found in this one warehouse location, over 10% of DCMs are not in Working Condition.

While the APA does not require the same, I think it would be prudent to include confirmation of the Purchase Price Adjustment in the Closing Acknowledgment. Given that Tyler provided me with a word copy of the same, I will revise and recirculate to include that adjustment.

Please let me know if you have any questions.

Thank you,  
Erin



**ERIN C. FARABAUGH**  
CHIEF LEGAL OFFICER

**HELLER CAPITAL**  
E: [EFARABAUGH@HELLERCG.COM](mailto:EFARABAUGH@HELLERCG.COM)  
M: 724.272.7907

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## **EXHIBIT 2**

# **Exhibit 2**

## **Filed Under Seal**

# **EXHIBIT 3**

# **Exhibit 3**

## **Filed Under Seal**

# **EXHIBIT 4**

# **Exhibit 4**

## **Filed Under Seal**

# **EXHIBIT 5**

# **Exhibit 5**

## **Filed Under Seal**



# **EXHIBIT 6**

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:

CASH CLOUD INC.,  
dba COIN CLOUD,

Debtor.

)  
)  
)  
) CASE NO.:  
) BK-23-10423-MKN  
)  
)  
)  
)  
)  
)  
)

DEPOSITION OF DEBTOR CASH CLOUD INC., DBA COIN CLOUD,  
PURSUANT TO FRCP 30(B)(6)

TANNER JAMES

Taken on Tuesday, August 22, 2023

At 10:01 a.m.

By a Certified Court Reporter

At 1731 Village Center Circle, Suite 150

Las Vegas, Nevada

Reported By: Karen L. Jones, CCR NO. 694  
Job No.: 54261 Firm No. 116F

1 APPEARANCES:

2 For the Debtor:

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13 (Admitted Pro Hac Vice)  
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19 -AND-

20 SHEA LARSEN  
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25

1 APPEARANCES (continued):

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5 BY: ALEXIS R. WENDL, ESQ.

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13 BY: DAWN M. CICA, ESQ.

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1 I N D E X

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 6 BY: Mr. Kinas 230

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1 P R O C E E D I N G S

2 \* \* \* \* \*

3 Whereupon --

4 (In an off-the-record discussion held prior  
5 to the commencement of the proceedings, counsel  
6 agreed to waive the court reporter's requirements  
7 under Rule 30(b)(5)(A) and 30(b)(5)(C) of the  
8 Nevada Rules of Civil Procedure.)

9 TANNER JAMES,

10 having been first duly sworn to testify to the  
11 truth, the whole truth, and nothing but the truth,  
12 was examined and testified as follows:

13

14 EXAMINATION

15 BY MR. KISSNER:

16 Q. Good morning. My name is Andrew. I'm  
17 with Morrison & Foerster and I represent Enigma  
18 Securities Limited in this action. I'm going to ask  
19 you a couple questions today about Cash Cloud, Inc.,  
20 which I'm going to refer to as "Coin Cloud" or "the  
21 debtor." I assume you'll understand me when I say  
22 that.

23 Could you please state your name for the  
24 record.

25 A. My name is Tanner James.

1 Q. And have we ever met before?

2 A. Not in person.

3 Q. But we've spoken over Zoom  
4 videoconference before?

5 A. Correct.

6 Q. Have you ever been deposed?

7 A. I have not.

8 Q. You have not.

9 And how are you feeling today?

10 A. Good.

11 Q. Good?

12 A. Yeah.

13 Q. Sleep well?

14 A. Yeah. No, great actually.

15 Q. Is there any reason that you can think  
16 of that you would not be able to give full and  
17 complete testimony today?

18 A. Not today.

19 Q. Okay. And sorry if this is personal,  
20 but are you on any drugs or medication or anything  
21 like that --

22 A. No, I am not.

23 Q. -- that would impair your ability?

24 Okay.

25 And so actually that leads me to my next

1 part because you'll see that we have our court  
2 reporter here today and she's going to be  
3 transcribing what we say. So I know in the course  
4 of usual, everyday conversation we can sort of  
5 anticipate what people are saying and sometimes  
6 we'll give the answer. Although it's a little  
7 awkward, if you can do me a favor and, even if you  
8 know what I'm going to ask, if you can wait for me  
9 to finish asking the question. That way our  
10 reporter can get a clear and accurate record. Okay?

11 And then same thing again, I know  
12 there's a lot of "uh-huhs" or nods, but those are  
13 not going to show up on the record. So if possible,  
14 please try and give verbal responses, again so that  
15 the court reporter can get a clean and accurate  
16 record. All right?

17 A. Understood.

18 Q. Sounds good.

19 And then just a couple more of these  
20 preliminaries but -- if you don't understand a  
21 question that I ask, then please let me know so that  
22 I can rephrase it. Conversely, if you do answer a  
23 question, I'm going to assume that you understood  
24 it. Is that okay?

25 A. Understood.

1 Q. And then you might hear objections from  
2 your counsel, and that's fine, but unless you are  
3 instructed not to answer, you should still answer my  
4 question even if there's an objection. All right?

5 A. Understood.

6 Q. And then we're going to take periodic  
7 breaks throughout the deposition, but let me know if  
8 at any point you need a break, whether just to  
9 collect yourself, go to the restroom, whatever.  
10 You're free to do that at any time. The only thing  
11 that I ask is that if there's a question pending,  
12 you answer the question before we take a break. All  
13 right?

14 A. Understood.

15 Q. Okay. So with all that out of the way,  
16 let's begin.

17 So who is your current employer?

18 A. Province.

19 Q. And what is your position with Province?

20 A. I'm a vice president.

21 Q. Okay. And can you describe some of your  
22 roles and responsibilities as vice president at  
23 Province?

24 A. Yeah. Generally, I am responsible for  
25 preparing analytics at the instruction of counsel or

1 principals of the firm.

2 Q. And do you work in one particular  
3 practice area or do you do various practice areas?

4 A. Generally corporate restructuring, but I  
5 have worked in various areas.

6 Q. Okay. What are some of those other  
7 areas you've worked in?

8 A. Litigation support and general M&A.

9 Q. When you say "litigation support," can  
10 you describe what that means?

11 A. Yeah. For clients, who are sometimes  
12 private, involved in a litigation where they need  
13 some type of analytics done around a case.

14 Q. Have you ever been called to testify in  
15 connection with any of those engagements?

16 A. No.

17 Q. Have you ever been called to testify in  
18 court for any of your engagements?

19 A. This one.

20 Q. This one. Okay.

21 And you've testified previously in this  
22 case?

23 A. So to clarify, I believe I did  
24 interrogatories.

25 Q. Okay. That's right.

1 A. Yes.

2 Q. And those were the interrogatories that  
3 Enigma sent to Province; is that correct?

4 A. Correct.

5 Q. But you've never done live testimony in  
6 a court for this case or any other case?

7 A. No, I have not.

8 Q. Can you tell me how long you've been a  
9 vice president of Province?

10 A. I believe two months now, a little over  
11 two months.

12 Q. Congratulations.

13 A. Thank you.

14 Q. And what was your role before vice  
15 president at Province?

16 A. Senior associate.

17 Q. Also at Province?

18 A. Correct.

19 Q. And how long were you in that position?

20 A. About a year.

21 Q. Okay. And did your roles and  
22 responsibilities differ as a senior associate versus  
23 your roles and responsibilities now as vice  
24 president?

25 A. Not so far.

1 Q. And prior to being a senior associate at  
2 Province, what was your previous position?

3 A. Associate.

4 Q. Also at Province?

5 A. Yes.

6 Q. And how long were you there -- or in  
7 that position?

8 A. About two years.

9 Q. Okay. And prior to that, did you work  
10 also at Province or were you at another firm?

11 A. I was in my master's program.

12 Q. And what was your master's degree in?

13 A. Financial management and accounting.

14 Q. And at what school?

15 A. North Central College.

16 Q. Is that in Nevada or?

17 A. It's in Illinois.

18 Q. Illinois. Okay. Gotcha.

19 So I'm going to ask -- you see your  
20 binder in front of you. I'm going to ask you to  
21 open that and go to Tab 1, which I'm going to ask  
22 the court reporter to mark as Enigma's Exhibit 1.

23 (Exhibit 1 marked.)

24 BY MR. KISSNER:

25 Q. Okay. You're there?



1 A. (Nods head in the affirmative.)

2 Q. Are you familiar with this document?

3 A. Yes.

4 Q. Can you describe it?

5 A. This is Enigma Securities Limited's  
6 notice of deposition for Cash Cloud, and then it has  
7 topics for examination.

8 Q. Okay. Great.

9 And do you understand that you're  
10 appearing today pursuant to this notice of  
11 deposition?

12 A. Yes.

13 Q. Okay. And -- okay, great. You're  
14 already on page 2.

15 So you understand that you're here to  
16 testify as a representative of the debtor on the  
17 topics that are listed on certain -- strike that.

18 You understand that you're here to  
19 testify as a representative of the debtor on certain  
20 topics listed in this notice?

21 A. Yes.

22 Q. Okay. And you're here -- sorry. Strike  
23 that.

24 Do you see topics -- and this is  
25 beginning at the bottom of page 2 of the notice of

1 deposition. Do you see topic nine?

2 A. Yes.

3 Q. Can you read it?

4 A. "Any analysis, evaluation, assessment of  
5 the scope of the collateral."

6 Q. And you're prepared to testify on this  
7 topic today?

8 A. To the extent it's relevant to this  
9 analysis, yes.

10 Q. Okay. To the extent that it's not  
11 relevant to this analysis, are you also prepared to  
12 testify?

13 A. I will do my best to, yes.

14 Q. And then going to the next page at the  
15 top of the page, topic ten, it's very long. But if  
16 I were to characterize this as testimony regarding a  
17 surcharge analysis, regarding a declaration that you  
18 filed in regard to a sale proceeds analysis, would  
19 you say that's a fair summary of topic ten?

20 A. Yes.

21 Q. Are you prepared to testify regarding  
22 the surcharge analysis, your declaration and the  
23 sale proceeds analysis today?

24 A. Yes.

25 Q. And then going to topic 11, can you read

1 that?

2 A. "Any analysis, evaluation or assessment  
3 of the scope of the lenders' collateral or property  
4 interests, including but not limited to those  
5 conducted or preparing the surcharge analysis, the  
6 James declaration or the sale proceeds analysis."

7 Q. Okay. Great.

8 And are you prepared to testify on those  
9 topics today?

10 A. Yes.

11 Q. And then going to topic 12. Can you  
12 read that. Sorry.

13 A. "Any analysis, evaluation or assessment  
14 of the necessity or reasonableness of the costs  
15 proposed to be surcharged as set forth in the  
16 surcharge analysis or the James declaration."

17 Q. And are you prepared to testify on those  
18 topics today?

19 A. Yes.

20 Q. And then could you read topic 13,  
21 please?

22 A. "Any analysis, evaluation or assessment  
23 of the benefit obtained by Enigma as a result of the  
24 costs proposed to be surcharged as set forth in the  
25 surcharge analysis or the James declaration."

1 Q. Great.

2 Are you prepared to testify on this  
3 topic today?

4 A. Yes.

5 Q. And finally topic number 14, could you  
6 please read that?

7 A. "The nature and amount of any costs  
8 proposed to be surcharged as set forth in the  
9 surcharge analysis or the James declaration."

10 Q. And are you prepared to testify on that  
11 topic today?

12 A. Yes.

13 Q. Okay. I just have a few more  
14 preliminary questions and then we can get into it.

15 So did you do anything to prepare for  
16 today's testimony as a representative of the debtor  
17 on topics nine through 14?

18 A. Yes.

19 Q. Could you tell me how you prepared?

20 A. Yes. I reviewed the production  
21 materials. I reviewed the James declaration. I  
22 reviewed the surcharge analysis. I reviewed the  
23 preliminary sale analysis. I reviewed the support  
24 to the surcharge analysis. I reviewed the surcharge  
25 application. I reviewed the Province application

1 for employment. I believe that's it.

2 Q. Okay. And when you said you reviewed  
3 the production materials, does that refer to  
4 materials produced in discovery to Enigma, in  
5 connection with this matter?

6 A. Yes.

7 Q. Okay. Did any of those documents help  
8 refresh your recollection on anything you might have  
9 forgotten?

10 A. Yes.

11 Q. Okay. Did you have any discussions with  
12 anyone at Coin Cloud in preparing for this  
13 testimony?

14 A. Not of the remaining employees.

15 Q. Did you have any discussions with any  
16 former employees from Coin Cloud in preparation for  
17 today?

18 A. No.

19 Q. Okay. Did you have any discussions with  
20 anybody at Province in preparing for your testimony  
21 today?

22 A. Yes.

23 Q. Who did you talk to at Province?

24 A. Daniel Moses and Paul Huygens.

25 Q. And did you have any discussions with

1 anybody representing or related to the creditors'  
2 committee in preparing for today's testimony?

3 A. I don't believe so, in preparation for  
4 it.

5 Q. Okay. And when I say "creditors"  
6 committee," you understand that I refer to the  
7 Official Committee of Unsecured Creditors appointed  
8 in the debtor's bankruptcy, correct?

9 A. (Nods head in the affirmative.)

10 Q. Okay. Did you have discussions with  
11 anybody else that I didn't mention in preparation  
12 for today's testimony?

13 A. Counsel for the debtor. And I'd also  
14 like to add that I did talk to David Dachelet as  
15 well, general counsel of Province.

16 Q. Okay. Thank you.

17 And about how long in total do you think  
18 you spent preparing for today?

19 A. Most of yesterday and several hours over  
20 the weekend.

21 Q. Okay. So about how many hours in total  
22 do you think you spent preparing?

23 A. Probably 24 to 34 hours.

24 Q. Okay. So I'm going to turn to Tab 3 in  
25 your binder, which I'm going to ask the reporter to

1 mark as Exhibit 2.

2 (Exhibit 2 marked.)

3 BY MR. KISSNER:

4 Q. And are you there?

5 A. So --

6 Q. Tab 3.

7 A. Tab 3. I'm there.

8 Q. Okay. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. The Declaration of Tanner James in  
12 Support of Motion for Entry of an Order Authorizing  
13 Debtor to Surcharge the Collateral of Genesis Global  
14 Holdco, LLC, Enigma Securities Limited and AVT  
15 Nevada, LP.

16 Q. And if I refer to this as "the surcharge  
17 declaration," will you know that I'm referring to  
18 this?

19 A. Yes.

20 Q. And if it's ever not clear from context,  
21 you'll just let me know?

22 A. Yes.

23 Q. All right. Did you create the surcharge  
24 declaration?

25 A. I helped develop it with counsel.

1 Q. Okay. Did you draft it?

2 A. I drafted -- I drafted the contents of  
3 it with the help of counsel.

4 Q. Okay. Did anybody other than counsel  
5 assist you in drafting this?

6 A. To clarify, are you talking about the  
7 text of the declaration or the exhibit or the  
8 entire...

9 Q. Well, let's start with the text of the  
10 declaration. Did anybody other than counsel assist  
11 you in drafting the declaration?

12 A. I believe it may have been reviewed by a  
13 principal of Province, but it was drafted between  
14 myself and counsel.

15 Q. And who at Province would have reviewed  
16 the text of the surcharge declaration?

17 A. Paul Huygens or Dan Moses.

18 Q. And can you turn to Exhibit A, which is  
19 page 7 of 11. Sorry, this one's not Bates stamped.  
20 And can you review this exhibit?

21 A. Yes.

22 Okay. Yes.

23 Q. Do you recognize Exhibit A to the  
24 surcharge declaration?

25 A. Yes.



1 Q. What is it?

2 A. It is a preliminary sale analysis of the  
3 costs to the estate for the collateral sold.

4 Q. Did you create Exhibit A to the  
5 surcharge declaration?

6 A. Yes.

7 Q. And did anybody else draft or edit  
8 Exhibit A to the surcharge declaration?

9 A. To clarify, when you say "edit," do you  
10 mean physically or with comments?

11 Q. I would mean either. Did anybody  
12 physically edit or provide comments to you on  
13 Exhibit A to the surcharge declaration?

14 A. I don't believe anybody else physically  
15 edited this document, specifically this exhibit, but  
16 I did receive comments from a variety of  
17 professionals of the estate at various points of the  
18 development of this analysis.

19 Q. Okay. Can you tell me which  
20 professionals of the estate you recall providing  
21 comments on Exhibit A to the surcharge declaration?

22 A. Sure. I received comments from Fox  
23 Rothschild. I received comments from the principals  
24 of Province. And a previous iteration of this, not  
25 this exact one, the committee, Seward & Kissel and

1 FTI.

2 Q. Did you receive comments from anybody  
3 else?

4 A. Not that I recall.

5 Q. Do you recall the nature of the comments  
6 that you received from the committee's  
7 professionals?

8 A. Yes. At least some of them.

9 Q. Could you describe those that you  
10 recall?

11 A. Sure. Comments around the scope of the  
12 warehouse costs and comments around the professional  
13 fees to be included. I believe that's it.

14 Q. Okay. Do you recall what the  
15 committee's comments on the scope of warehouse costs  
16 were?

17 A. I recall comments about the period of  
18 time to be counted related to the warehouse costs,  
19 and reconciliation of invoices to the amounts  
20 surcharged.

21 Q. Okay. And do you recall what the nature  
22 of the comments you received from the committee were  
23 regarding professional fees to be included in  
24 Exhibit A to your surcharge declaration?

25 A. Sure. I remember general feedback on

1 the inclusion of them generally speaking, and  
2 feedback on the amounts related to their particular  
3 firms.

4 Q. And do you recall what that feedback  
5 was?

6 A. Sure. Whether or not they were to be  
7 included and the amounts.

8 Q. And were they asking the amounts to be  
9 increased, decreased or otherwise changed?

10 A. I don't believe the amounts were ever  
11 changed, to my memory. I do remember amounts being  
12 given to me.

13 Q. Okay. So would it be fair to say that  
14 the committee provided you comments regarding the  
15 professional fees to be included in this analysis,  
16 but that you did not modify this analysis to reflect  
17 those comments?

18 A. No. I would have had to have had the  
19 amounts provided to include them.

20 Q. Okay. I think I understand.

21 So to confirm, you provided a draft  
22 copy -- strike that. Let me rephrase.

23 Would it be fair to say, then, that you  
24 provided a draft copy of this analysis to the  
25 committee's advisors, who then provided you with

1 information regarding professional fees to be  
2 included in this analysis?

3 A. To clarify, this exhibit is a modified  
4 version of a previous analysis that I believe Enigma  
5 saw and Genesis, and I would have received those  
6 amounts during the development of the prior version,  
7 not had them included for this particular exhibit.

8 Q. Okay. So then why don't we take a look  
9 at Tab 12 in your binder, which I'm going to mark  
10 as -- or I'm going to ask the reporter to mark as  
11 Exhibit 3.

12 (Exhibit 3 marked.)

13 BY MR. KISSNER:

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is a preliminary sale analysis of  
18 the sale proceeds with adjustments to the gross  
19 proceeds as it relates to the parties who have liens  
20 on the collateral.

21 Q. And if I refer to this document as "the  
22 preliminary surcharge analysis," will you know what  
23 I'm referring to?

24 A. Yes.

25 Q. Did you create this preliminary

1 surcharge analysis?

2 A. When you say "create," you mean  
3 physically, right, not with feedback?

4 Q. I just mean did you prepare this  
5 preliminary surcharge analysis?

6 A. Yes, I physically created this analysis.

7 Q. Did anybody else assist you in preparing  
8 it?

9 A. Yes. I received feedback from a variety  
10 of estate professionals.

11 Q. And could you tell me which estate  
12 professionals provided you feedback on this  
13 preliminary surcharge analysis?

14 A. Sure. Fox Rothschild, members of  
15 Province, committee professionals from both Seward &  
16 Kissel and FTI.

17 Q. And now is this the -- strike that.

18 You testified earlier that Enigma's  
19 Exhibit 2, which is your declaration, you had  
20 testified earlier that Exhibit A to your surcharge  
21 declaration, there had been a prior iteration of  
22 that document; is that correct?

23 A. Correct.

24 Q. Is this preliminary surcharge analysis,  
25 Enigma's Exhibit 3, is that the prior iteration of

1 your -- of the exhibit attached to your surcharge  
2 declaration?

3 A. I believe this is one of the previous  
4 iterations, yes.

5 Q. Okay. Now, is everything in Exhibit 3  
6 true, to the best of your knowledge? Tab 13 is  
7 still Exhibit 3 --

8 A. Sorry.

9 Q. No problem.

10 Or -- sorry -- Tab 12. I apologize.  
11 The document you're currently looking at, Enigma's  
12 Exhibit 3, I apologize.

13 A. Sorry. When you say "true to the best  
14 of my knowledge," you mean was this filed or -- this  
15 is certainly a draft.

16 Q. Okay. But at the time that you prepared  
17 this, was everything in it accurate, to the best of  
18 your knowledge?

19 A. Yeah. I believe that this would have  
20 been the most current information that I had. Yeah,  
21 at the time this was prepared, certainly.

22 Q. And at the present time is everything in  
23 here still accurate, to the best of your knowledge?

24 A. No.

25 Q. Could you please describe what in here

1 is no longer accurate, to the best of your  
2 knowledge?

3 A. Sure. I don't know all of the changes  
4 that have been made to this, comparing the two, but  
5 at least professional fees are higher in the filed  
6 version.

7 Q. And why are the professionals fees  
8 higher in the filed version?

9 A. Because there weren't fees accrued  
10 available to me at the time that I made this.

11 Q. Were there any other changes that you  
12 made between this Exhibit 3 and what was marked  
13 previously as Exhibit 2, which was the final  
14 surcharge analysis attached to your declaration?

15 A. Sure. I don't remember all of them, but  
16 I know that the adequate protection payments were  
17 removed. And I also know there was an adjustment to  
18 the purchase price and a corresponding reduction in  
19 Province's sale fee. And there may have been  
20 changes to the number of machines and, therefore,  
21 also allocation of costs.

22 Without spending time comparing every  
23 aspect of the analysis, those are -- those are the  
24 ones that I know of right now.

25 Q. Okay. And if we could turn back then to

1 Tab 3, which was marked earlier as Exhibit 2. And  
2 then if you'll go back to Exhibit A of this document  
3 which begins on page 7.

4 So we were just talking about this  
5 document, correct? This is the final version of  
6 your preliminary surcharge analysis; is that  
7 correct?

8 A. Yes.

9 Q. And so is it correct to say that this  
10 analysis does not include a reduction for adequate  
11 protection payments made to secured lenders?

12 A. Yes.

13 Q. And why were those adequate protection  
14 payments removed from this analysis?

15 A. My understanding -- and certainly a  
16 better question for counsel -- is that the  
17 recharacterization of adequate protection is a  
18 separate issue.

19 Q. And so now -- because, before -- strike  
20 that, please.

21 You'll recall earlier I was asking you  
22 some questions about your declaration, and you had  
23 drawn a distinction between the text of the  
24 declaration and the exhibits attached thereto. Do  
25 you recall that?



1 A. Yes.

2 Q. Okay. So now, having walked through the  
3 text of the declaration and Exhibit A, can you tell  
4 me if everything in this document -- and by "this  
5 document" I mean the text of your declaration and  
6 Exhibit A -- if this is true and accurate, to the  
7 best of your knowledge?

8 A. It certainly was at the time of filing.  
9 If any reservations, it would be about the count of  
10 the machines, but I don't believe that changes the  
11 amount of the surcharge.

12 Q. If you could, tell me what has changed  
13 about the count of the machines since the time this  
14 declaration was filed and today?

15 A. Sure. I certainly don't remember the  
16 amounts or number of machines that changed or has  
17 changed or may have changed, but I know that there  
18 is ongoing reconciliation of the records and, as  
19 mistakes in the records are found and corrected, the  
20 numbers can change.

21 Q. Can you tell me a little bit more about  
22 that reconciliation process?

23 A. Sure. Any particular aspect of the  
24 reconciliation process?

25 Q. Just generally.

1 MR. MANN: Objection. Calls for a  
2 narrative.

3 BY MR. KISSNER:

4 Q. You can answer.

5 A. Yeah. When we received the records,  
6 they were not in a state that was practical to use  
7 for several of the analytics that have been used  
8 throughout, and both the debtor and its  
9 professionals have done their best to clean those  
10 records so that they can be used and are as close to  
11 accurate as we can possibly get them.

12 Q. And when you say "the records," to what  
13 are you referring?

14 A. The debtor's records of its kiosk  
15 inventory.

16 Q. And when did you first receive the  
17 debtor's records with respect to its kiosk  
18 inventory?

19 A. I don't remember the exact date.

20 Q. Do you have a sense of month? Year?

21 A. Sure. Certainly the first quarter of  
22 the year.

23 Q. When you say the first quarter of the  
24 year, you're talking -- you mean the first quarter  
25 of 2023?

1 A. Correct.

2 Q. So that would have been six to eight  
3 months ago; is that fair?

4 A. That sounds right.

5 Q. And when did you begin the process of  
6 reconciling the debtor's inventory?

7 A. I don't remember when we decided it  
8 needed a full-fledged work stream, but I do know  
9 that we began trying to compare the different  
10 records that we had in our possession fairly early  
11 on.

12 Q. And when you say different records that  
13 you had in your possession, does that mean there was  
14 another set of records other than the debtor's  
15 inventory?

16 A. The debtor has a variety of departments,  
17 each with their own sets of records, that aren't  
18 always consistent with each other.

19 Q. Do you recall any particular times where  
20 there was a conflict between two or more different  
21 records from the debtor?

22 A. Sure.

23 Q. Can you describe them?

24 A. To my memory, the debtor's CCOS, its  
25 software program records, did not always tie to the

1 inventory records that we were told were the best  
2 record to go off of. And at certain points we found  
3 discrepancies between the debtor's lease records and  
4 its inventory records, and certainly discrepancies  
5 between collateral records, at times, and the  
6 debtor's inventory records.

7 Q. Now, you just said that at some point  
8 you were told that the debtor's inventory record was  
9 the best record to go off; is that correct?

10 A. Yes.

11 Q. Who told you that?

12 A. It would have been Chris McAlary or one  
13 of the debtor's employees, Wintana, who I don't  
14 remember their last name.

15 Q. And who's Chris McAlary?

16 A. The former CEO of Coin Cloud.

17 Q. And who is Wintana?

18 A. I don't know her title, but generally  
19 she was responsible for the machines and keeping the  
20 records of them and maintaining them.

21 Q. And so this best version of the  
22 inventory, is that what was used in preparing  
23 Exhibit 2, your surcharge analysis?

24 A. Certainly not the original version of  
25 that record. As we pointed out mistakes or

1 inconsistencies in the record that are -- attempted  
2 to update that record several times. So a revised  
3 form of that original record was certainly the basis  
4 of this analysis, but ultimately not the same as the  
5 original.

6 Q. Okay. So other than updating -- sorry.  
7 Please strike that.

8 You said before that if anything were  
9 not true and accurate in this surcharge analysis  
10 today, it would be the count of the machines set  
11 forth therein; is that correct?

12 A. That sounds right.

13 Q. Is there anything else in your surcharge  
14 analysis that you would like to change or that you  
15 do not think is true and accurate today?

16 A. I believe there are parts of this  
17 analysis that may be contingent on the future at the  
18 time it was prepared, but otherwise, to my knowledge  
19 right now, I'm not aware of anything else that would  
20 need to be revised. Maybe the run rate of the  
21 Trangistics claim. But again, it's part of an  
22 ongoing dispute with them.

23 Q. And when you say "contingent on the  
24 future," what does that mean?

25 A. Some of these amounts include estimates

1 of future months. And I also believe the notes of  
2 the analysis point out other parts of this analysis  
3 that are contingent on either new information or  
4 resolution of disputes.

5 Q. Okay. We're going to shift gears for a  
6 little bit.

7 Do you know who Enigma Securities  
8 Limited is, my client?

9 A. Yes.

10 Q. Can you tell me who they are?

11 A. It is, to my understanding, a secured  
12 creditor of Coin Cloud.

13 Q. If we could turn to Tab 4 in your  
14 binder, which I'll ask to be marked as Exhibit 4.  
15 That's easy.

16 (Exhibit 4 marked.)

17 BY MR. KISSNER:

18 Q. Do you recognize this document?

19 A. I believe I've seen at least a version  
20 of this document, if not this document.

21 Q. Can you describe for me what this is?

22 A. It is a secured loan facility agreement.

23 Q. And can you tell me who the parties to  
24 this secured loan facility agreement are?

25 A. Cash Cloud, dba Coin Cloud, and Enigma

1 Securities Limited.

2 Q. And in your own words, could you  
3 describe to me what this document says.

4 MR. MANN: Objection. I feel like this  
5 is beyond the scope of what he's here today. I feel  
6 like this is more pertaining to topic number 3, the  
7 Coin Cloud's knowledge regarding Enigma's security  
8 interest over the collateral as defined in that  
9 certain security agreement. And so I would state  
10 that he's not the 30(b)(6) representative of Coin  
11 Cloud for that question.

12 MR. KISSNER: Right, but he is here as  
13 the 30(b)(6) representative for topic nine, which is  
14 evaluation, analysis, assessment of scope of the  
15 collateral.

16 MR. MANN: Okay.

17 MR. KISSNER: Could you read the last  
18 question back.

19 (The record is read by the reporter.)

20 BY MR. KISSNER:

21 Q. You can actually strike that. I don't  
22 really like that question.

23 Could you, in your own words, describe  
24 to me what this document does?

25 A. Yes. This appears to be an agreement

1 between Coin Cloud and Enigma Securities to lend  
2 money to Coin Cloud, with a security interest in  
3 certain cryptocurrency kiosks.

4 Q. And you said before that Enigma could be  
5 described as a secured lender to the debtor; is that  
6 correct?

7 A. That is my understanding.

8 Q. Okay. So is this Exhibit 4 -- to your  
9 understanding, is this the -- is this the loan that  
10 you were describing before that makes Enigma a  
11 secured lender to the debtor?

12 A. Yes, that's my understanding.

13 Q. And have you reviewed this document at  
14 any time previously?

15 A. I may have reviewed this or a version of  
16 this in the debtor's file at some point.

17 Q. Did you ever review this in preparing  
18 your surcharge analysis?

19 A. No, I did not.

20 Q. Why not?

21 A. Because it wasn't necessary to the  
22 preparation of the surcharge analysis.

23 Q. Okay. Can you turn to Tab 5, which I'll  
24 ask the reporter to mark as Exhibit 5.

25 (Exhibit 5 marked.)



1 BY MR. KISSNER:

2 Q. Do you recognize this document?

3 A. I believe I've seen a version of this,  
4 if not this version.

5 Q. And can you describe, in your own words,  
6 what this document is.

7 MR. MANN: Again, I'm just going to say  
8 the same objection, that this is pertaining more to  
9 topic number 3, which he's not here today to answer.

10 MR. KISSNER: Okay, and same response.

11 BY MR. KISSNER:

12 Q. You can answer.

13 A. This appears to be a security agreement  
14 between Cash Cloud and Enigma Securities granting  
15 Enigma a security interest in certain collateral of  
16 Coin Cloud.

17 Q. And does this Exhibit 5 relate to  
18 Exhibit 4, the loan agreement?

19 MR. MANN: I'm just going to object this  
20 is a legal conclusion, that he's not here to assert  
21 the connection to the -- the security agreement to  
22 the lease.

23 BY MR. KISSNER:

24 Q. You can answer.

25 A. Yeah. With Counsel's comments, I see

1 here that it says "security agreement" as a defined  
2 term, dated April 22, and I see here that this is a  
3 security agreement dated April 22. So I could see  
4 how this would be related to the other document,  
5 without thorough review, though. Yes, this appears  
6 to be related.

7 MR. KISSNER: Off the record.

8 (A discussion is held off the record.)

9 MR. KISSNER: Back on the record.

10 BY MR. KISSNER:

11 Q. So Exhibit 5, you said before that you  
12 reviewed either this agreement or some version of  
13 it; is that correct?

14 A. I've at least seen it and looked through  
15 it, at a minimum, I would say, a version of it.

16 Q. And did you refer to this agreement or a  
17 version of it in preparing your surcharge analysis?

18 A. Can you specify which part of this? Are  
19 you referring to Exhibit 5 or 6?

20 Q. I'm referring to Exhibit 5, which is  
21 also Tab 5, the security agreement.

22 A. I believe this is the same schedule of  
23 collateral as was in the UCC lien filed by Enigma  
24 that was used to identify Enigma's collateral in the  
25 debtor's inventory records.

1 Q. And when you say "this," are you  
2 referring to Schedule 1, to the security agreement  
3 that's been marked as Exhibit 5?

4 A. Yes.

5 Q. And did you review Schedule 1 to the  
6 security agreement marked as Exhibit 5 in preparing  
7 your surcharge analysis?

8 A. Yes, as an indicator of who might  
9 encumber certain kiosks, but not as a means to  
10 identify the total amount of costs to be surcharged.

11 Q. Okay. In Schedule 1 to Exhibit 5, which  
12 is in front of you, would it be fair to say that  
13 this is a list of kiosks?

14 A. Yes.

15 Q. And by the way, there's a lot of  
16 different nomenclature, but if, throughout the day,  
17 you hear me refer to "kiosks" or "DCMs" or "digital  
18 currency machines" or maybe even "machines" or  
19 "ATMs," will you understand that, in context, I'm  
20 referring to digital currency kiosks?

21 A. Yes.

22 Q. Okay. Great.

23 Can you tell me how many kiosks are  
24 listed on Schedule 1 to Exhibit 5?

25 A. Without counting each row of the

1 schedule, the schedule itself indicates that there  
2 are 3,592 based on the first column of the schedule.

3 Q. Can you turn one more page?

4 A. I see.

5 Q. Do you see some additional kiosks listed  
6 on this page?

7 A. Yes, I do. And I see a number 3,677.

8 Q. So is it your understanding that this  
9 Schedule 1 to Exhibit 5 lists 3,677 kiosks?

10 A. I see 3,677 rows. I cannot say with  
11 certainty that each of those kiosks exists or are  
12 unique.

13 Q. That's fair.

14 But this Schedule 1 to Exhibit 5 appears  
15 to list 3,677 kiosks, correct?

16 A. Yes. I believe that's what this  
17 schedule is aiming to do.

18 Q. Okay. Great.

19 Could you turn to Tab 11 in your binder,  
20 which I'm going to ask be marked as Exhibit 6.

21 (Exhibit 6 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. This document does look familiar to me.  
25 I believe I've seen this or a version of it.

1 Q. Can you describe, in your own words,  
2 what it is?

3 A. This is a UCC financing statement for  
4 Cash Cloud, Inc. with a secured party of Enigma  
5 Securities Limited and a schedule of machines.

6 Q. Do you know what a "UCC financing  
7 statement" is?

8 A. Yes.

9 Q. Could you tell me what it is?

10 A. I believe it is a filed document that  
11 aims to identify a security interest in certain  
12 property.

13 Q. To your knowledge, does this Exhibit 6  
14 relate to the security agreement which was marked as  
15 Exhibit 5 and the loan agreement marked as  
16 Exhibit 4?

17 A. They appear to have the same schedule of  
18 machines.

19 Q. Okay. You said that you've reviewed  
20 either this Exhibit 6 or a version of it previously;  
21 is that correct? We're still in Tab 11.

22 A. You're talking about this UCC financing  
23 statement?

24 Q. Yes. This UCC financing statement  
25 marked as Exhibit 6, you said that you've reviewed

1 this or a version of it previously; is that correct?

2 A. Yes.

3 Q. Okay. Did you refer to this UCC  
4 financing statement when completing your surcharge  
5 analysis?

6 A. I referred to a -- an Excel version of  
7 Schedule 1.

8 Q. And when you say "Schedule 1," you're  
9 referring to Schedule 1 to Exhibit 6, the UCC  
10 financing statement?

11 A. Yes.

12 Q. So, before, you said that Enigma was a  
13 secured lender to the debtor; is that correct?

14 A. That is my understanding.

15 Q. And so that would mean that it was  
16 secured by collateral; is that fair to say?

17 A. That is my understanding from  
18 conversations with counsel and my colleagues and my  
19 review, yes.

20 Q. What collateral do you understand  
21 Enigma's loan to have been secured by?

22 A. Certain kiosks.

23 Q. And do you know how many kiosks were  
24 pledged to secure Enigma's loan?

25 A. I don't know how many kiosks the debtor

1 pledged at the time, other than by looking at this.  
2 I know that there was supposed to be 3,677 on paper.  
3 I can't verify how many there were, other than by  
4 reviewing the debtor's records.

5 Q. Okay. Well, why don't we take a look at  
6 this Exhibit 6, then. So on the first page, which  
7 is Bate-stamped CC\_0000026 -- it's the first page --  
8 and then at the bottom, it says, "4. Collateral."

9 Do you see where it says that?

10 A. Yes.

11 Q. Can you please read for me what it says  
12 beginning with "4. Collateral"?

13 A. Yes. "The 3,677 cryptocurrency ATMs  
14 listed on Schedule 1, including the location of each  
15 machine, attached hereto and incorporated herein by  
16 reference."

17 Q. So based on that, does that change your  
18 answer as to how many ATMs were pledged to secure  
19 Enigma's loan?

20 A. It would make sense to me if the debtor,  
21 prior to my involvement, pledged this many machines  
22 to Enigma, but I was not there when the loan was put  
23 into place.

24 Q. That's fair.

25 But based off of the information that

1 you have, and at least off of the documents that  
2 you've reviewed, would it be fair to say that at the  
3 time this UCC financing statement, the secured loan  
4 agreement and the security agreement were entered  
5 into, the debtor pledged 3,677 machines to secure  
6 Enigma's loan?

7 A. From these documents, yes.

8 MR. KISSNER: All right. I just have  
9 two more documents and then we can take a quick  
10 break, if that works for everybody. Unless you want  
11 to break now?

12 THE WITNESS: We can keep going.

13 MR. KISSNER: Rob, are you good?

14 MR. KINAS: (Indicating).

15 MR. KISSNER: Great.

16 BY MR. KISSNER:

17 Q. I'm going to ask you to turn to Tab 29  
18 which actually is in native form.

19 MR. KISSNER: Could you mark Tab 29 as  
20 Exhibit 7.

21 (Exhibit 7 marked.)

22 BY MR. KISSNER:

23 Q. Do you have this open, Mr. James?

24 A. Yes.

25 Q. Okay. Do you recognize this document?



1 A. Yes. This appears to be one of the  
2 iterations of the kiosk reconciliation spreadsheet.

3 Q. When you say "one of the iterations,"  
4 could you be more specific?

5 A. Sure. As it says at the top, it's  
6 subject to material change, and this version is  
7 likely and, I believe, is different than the  
8 original record and changed in the -- in the weeks  
9 or months following 4/6/2023, which is the date in  
10 the filename, as the debtor continue to correct its  
11 records or we received new and better information.

12 Q. Okay. Did you create Exhibit 7, the  
13 spreadsheet in front of you?

14 A. I worked on this spreadsheet. I did not  
15 create the source data and I did not conduct all of  
16 the reconciliation myself, and had input from  
17 employees of the company.

18 Q. Okay. Let's take that in stages, then.  
19 So you said that you did not perform all  
20 of the reconciliation of the data underlying  
21 Exhibit 7; is that correct?

22 A. Yes.

23 Q. Who else would have performed that  
24 reconciliation?

25 A. Colleagues at Province may have helped,

1 given the volume of the data and the source data,  
2 and employees of the company may have worked to  
3 provide updated source data. And I believe that's  
4 it.

5 Q. Okay. Now, did anybody other than  
6 colleagues at Province help you create this  
7 document?

8 MR. MANN: I was going to say objection.  
9 Asked and answered.

10 You can keep going.

11 THE WITNESS: Not that I remember,  
12 outside of the parties that I just described.

13 BY MR. KISSNER:

14 Q. Okay. Is everything in this document  
15 true and accurate, to the best of your knowledge?

16 A. This is a draft that changed and I  
17 cannot validate that each of these machines  
18 physically has these identifiers or are where they  
19 are or exists, other than relying on the debtor's  
20 records.

21 Q. That's fair.

22 But at the time that this was created --  
23 strike that.

24 You said before that this was created on  
25 or about April 6, 2023?

1 A. (Nods head in the affirmative.)

2 Q. At that time, to the best of your  
3 knowledge, was this true and accurate?

4 A. Yes.

5 Q. Okay.

6 A. This was the best version that we had at  
7 the time, assuming this is a version that was  
8 produced to Enigma and not a different draft.

9 Q. Fair enough.

10 Could you tell me what you -- sorry.  
11 Strike that.

12 Am I correct, then, that there's some  
13 things that you would probably change if you were to  
14 recreate this analysis today?

15 A. Yes.

16 Q. Can you tell me what those changes might  
17 be?

18 A. I don't know all of the changes that  
19 have been made, but I do know that time was spent  
20 reconciling serial numbers, duplicating identifiers  
21 to the extent they were relevant, and potentially  
22 locations of certain machines in the months after.

23 Q. And when you say "reconciling," does  
24 that refer -- sorry. Strike that.

25 Do you recall earlier testifying that

1 there was an ongoing process of comparing the  
2 various sources and records of the debtor? Do you  
3 recall that?

4 A. Yes.

5 Q. When you refer to the reconciliation  
6 process for this Exhibit 7, is that the same  
7 process?

8 A. If this was the version that was  
9 produced to Enigma, yes, this was what we thought,  
10 at the time, was close to a final version and may  
11 have changed after that with new or better  
12 information.

13 Q. Could we turn then to Tab 34 in your  
14 binder, which I'll ask be marked as Exhibit 8.

15 (Exhibit 8 marked.)

16 BY MR. KISSNER:

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. Could you describe it?

20 A. This appears to be an e-mail thread  
21 between myself and you, with other members of  
22 professionals -- professional firms from the estate  
23 cc'd.

24 Q. Do you recall sending this e-mail?

25 A. Yes.

1 Q. You do, okay.

2 And could you please read for me your  
3 message at the top dated April 7th at 11:48 a.m.

4 A. Yes. "Hi, Andrew, the company has  
5 produced an updated reconciliation of inventory by  
6 location across the fleet. In this file can you  
7 find a spread of the Enigma -- schedule Enigma filed  
8 in its UCC that lists the LIDs associated with its  
9 collateral. The result of the reconciliation was  
10 that there are 537 LIDs marked as rejected that also  
11 appear in Enigma's UCC schedule."

12 Q. Okay. Great.

13 Do you know what the file attached  
14 refers to?

15 A. I don't see it on the e-mail chain, but  
16 I believe it is this file (indicating).

17 Q. And when you say "this file," you're  
18 referring to Exhibit 7, the spreadsheet in front of  
19 you?

20 A. Yes, the spreadsheet that we previously  
21 reviewed.

22 MR. KISSNER: We can go off the record.  
23 (A recess is taken.)

24 MR. KISSNER: Back on the record.

25 ///

1 BY MR. KISSNER:

2 Q. Now, Mr. James, have you personally ever  
3 performed an inventory or other analysis to identify  
4 which of the debtor's kiosks are pledged to which  
5 lender?

6 A. Can you clarify, do you mean on this  
7 particular project?

8 Q. Sure. Let's take a step back.

9 So you said before that Enigma is a  
10 secured lender to the debtor, correct?

11 A. Yes.

12 Q. Does the debtor have other secured  
13 lenders?

14 A. Yes, to my knowledge.

15 Q. Who are they?

16 A. Actual lenders, I believe Genesis,  
17 AV Tech maybe -- I don't know if I would  
18 characterize them as a lender, but I believe they  
19 are -- and the post-petition financing from the DIP  
20 facility. Right now that's -- those are the lenders  
21 that I know of.

22 Q. Okay. And each of those parties --  
23 "those parties" being Genesis, AV Tech, the  
24 post-petition lender and Enigma -- they all claim a  
25 security interest in the debtor's property, correct?

1 A. Correct.

2 Q. What type of property do they claim an  
3 interest in?

4 A. I believe Genesis has a blanket lien,  
5 though cash, to my understanding, is unencumbered.  
6 I believe Enigma had a lien on certain kiosks. And  
7 I believe AV Tech also had an interest in certain  
8 kiosks.

9 Q. And the DIP lender?

10 A. I believe the DIP lender had a lien on  
11 everything of the debtor's estate.

12 Q. And when you say the DIP lender had a  
13 lien on everything, would that include a lien on  
14 certain of the debtor's kiosks?

15 A. I believe so, but I believe they were  
16 supposed to marshal the cash.

17 Q. Okay. Before, you said Genesis had a  
18 blanket lien, correct?

19 A. That's my understanding.

20 Q. Would the blanket lien of Genesis then  
21 include certain of the debtor's kiosks?

22 A. Yes.

23 Q. So would it be fair to say that at least  
24 four parties assert an interest in kiosks of the  
25 debtor?

1           A.           At least they did before the DIP was  
2       paid off.

3           Q.           Fair enough.

4                       At certain points then during this case,  
5       there were at least four parties that claimed an  
6       interest in kiosks of the debtor, correct?

7           A.           Correct.

8           Q.           Okay. Now, have you then ever had to  
9       perform an inventory or an analysis to determine  
10      which kiosks were pledged to which lender?

11          A.           Yes, we've -- yes, we've created several  
12      drafts of this analysis.

13          Q.           Okay. And do you still have Exhibit 7,  
14      the Excel, up in front of you?

15          A.           One second.

16          Q.           Certainly.

17          A.           Yes.

18          Q.           And is Exhibit 7 one of these analyses  
19      or iterations of analyses?

20          A.           Yes.

21          Q.           Okay. Now, turn back -- it might  
22      already be in front of you, but it's Tab 34 in your  
23      binder, which had been marked as Exhibit 8.

24          A.           Yes, I'm there.

25          Q.           And do you see in your message of



1 April 7th at 11:48 a.m. where you said that the  
2 kiosk reconciliation, quote, lists -- sorry. Strike  
3 that.

4 Do you see where, in your message dated  
5 April 7th at 11:48, you say that the attached file,  
6 quote, lists the LIDs associated with its  
7 collateral, end quote?

8 A. Yes.

9 Q. Did you understand "its collateral" to  
10 refer to Enigma's collateral?

11 A. Yes.

12 Q. And then in the next sentence, do you  
13 see where it says "there are 537 LIDs marked as  
14 rejected that also appear in Enigma's UCC schedule,"  
15 end quote?

16 A. Yes.

17 Q. What is "LID"?

18 A. It's an acronym for location ID.

19 Q. Okay. And what is a "location ID" with  
20 respect to a kiosk?

21 A. My understanding, from conversations  
22 with former employees and employees of the debtor,  
23 is that a location ID is an identifier given to a  
24 particular location.

25 Q. So would it be fair to say that you've

1 used location ID as a way of identifying Enigma's  
2 collateral?

3 A. I believe I noted 537 LIDs that also  
4 appeared in Enigma's UCC schedule.

5 Q. So you don't -- sorry. Strike that.

6 So you did not use LID as a means by  
7 which to identify Enigma's collateral?

8 A. I believe Enigma identified LIDs in its  
9 UCC filing --

10 Q. Uh-huh.

11 A. -- that were also found in the debtor's  
12 records. And a machine may have been at that  
13 location, but was not -- to my understanding, from  
14 conversations with counsel -- an identifier that can  
15 be used by itself to identify collateral.

16 Q. Okay. Well, why don't you read the next  
17 paragraph of this e-mail which is Exhibit 8. And  
18 can you read it aloud.

19 A. Yes. "The file notes which motion the  
20 rejection was part of and the address of the  
21 location. This spreadsheet should contain the  
22 information necessary to identify Enigma's  
23 collateral as it relates to the motions to reject."

24 Q. Okay. That's fine.

25 So this says that there's a spreadsheet

1 attached to Exhibit 8, fair?

2 A. (Nods head in the affirmative.)

3 Q. And we've ascertained that that  
4 spreadsheet is Exhibit 7, which you have in front of  
5 you, correct?

6 A. (Nods head in the affirmative.)

7 Q. And this says that the spreadsheet  
8 contains information to identify Enigma's  
9 collateral, correct?

10 A. Yes.

11 Q. And based off of that spreadsheet,  
12 you've identified 537 machines as Enigma's  
13 collateral; is that fair to say?

14 A. No.

15 Q. Why do you disagree with that statement?  
16 Why not?

17 A. The sheet contains the debtor's records  
18 at the time of the serial numbers and where the  
19 debtor believed that machine, tied to that serial  
20 number, was relative to the LID of that machine.  
21 Said differently, a serial number was believed to be  
22 at that LID, for the location tied to that LID, and  
23 Enigma likely had an interest in machines tied to  
24 those serial numbers.

25 Q. Okay. Can you turn to the

1 second-to-last page, then, of Exhibit 8, which --  
2 let me know when you're there. It's Tab 34, in  
3 front of you. That's it.

4 A. Is this the page you're referencing  
5 (indicating)?

6 Q. Yeah. It's an e-mail from Kissner,  
7 Andrew, March 30th. Do you see that?

8 A. Yes.

9 Q. Would it be fair to say this is an  
10 e-mail from me, Andrew Kissner, to, among others,  
11 you?

12 A. Yes.

13 Q. And can you read this e-mail. You don't  
14 need to read it out loud, but can you just take your  
15 time and review it.

16 A. Okay.

17 Q. Do you recall receiving this e-mail?

18 A. Yes.

19 Q. Can you maybe summarize, in your own  
20 words, what this e-mail says? Actually, you know,  
21 strike that.

22 Do you recall the context for this  
23 e-mail?

24 A. Yes.

25 Q. What was that context?

1           A.           To my memory, this was an e-mail sent by  
2           you, Andrew Kissner, pointing out potential concerns  
3           in the company's data as it relates to Enigma's  
4           collateral.

5           Q.           Did the -- strike that.

6                       In the context of bankruptcy, do you  
7           know what "rejection" means?

8           A.           Rejection --

9                       MR. MANN: I'm just going to say  
10          objection, legal conclusion.

11         BY MR. KISSNER:

12          Q.           You can answer.

13          A.           Rejection, generally, of a contract or  
14          lease.

15          Q.           I'm not asking for, you know, a legal  
16          opinion or anything, but would it be -- would it  
17          comport with your understanding if I were to say  
18          that rejection of a contract means that a debtor is  
19          repudiating that contract, they don't want it?

20                       MR. MANN: I'm still objecting that this  
21          is a legal conclusion. He's not here as a legal  
22          expert.

23                       MR. KISSNER: That's fine.

24         BY MR. KISSNER:

25          Q.           You can answer.

1           A.           Can you use a different word than  
2           "repudiating"?

3           Q.           In your experience in doing corporate  
4           restructuring work, is it fair to say that debtors  
5           sometimes are parties to burdensome contracts?

6                       MR. MANN: I'm just going to say  
7           objection, this is going beyond the scope of the  
8           topics. He's here representing Coin Cloud and these  
9           questions are, I feel like, more targeting directly  
10          to him as an individual.

11                      MR. KISSNER: Well, first, I'd ask that  
12          you probably stop with the speaking objections. I  
13          mean I've been trying to give you some rope, but  
14          just "objection to form" is plenty.

15                      I mean, we have an e-mail here and it's  
16          like pulling teeth getting him to tell me what the  
17          e-mail says, so we have to start with basics so  
18          that's what we're going to do.

19          BY MR. KISSNER:

20          Q.           So in your experience doing corporate  
21          restructuring, would it be fair to say that debtors  
22          sometimes find themselves party to burdensome  
23          contracts?

24          A.           Yes.

25          Q.           And would it -- would it comport with

1 your understanding if I were to tell you that  
2 rejection is one way to get out of a burdensome  
3 contract?

4 MR. MANN: Objection to form.

5 THE WITNESS: Yes.

6 BY MR. KISSNER:

7 Q. Did the debtor reject any contracts in  
8 its current Chapter 11 case?

9 A. Yes.

10 Q. And did the debtor, to your  
11 recollection, reject any agreements relating to its  
12 kiosks?

13 A. I believe the debtor rejected at least  
14 leases where kiosks were installed.

15 Q. And do you know what happened to the  
16 kiosks at those locations?

17 A. My understanding is they were either  
18 surrendered to the lender or abandoned.

19 Q. Okay. So does that refresh your  
20 recollection as to the context in which this e-mail  
21 was sent?

22 A. Yes.

23 Q. Okay. Can you maybe more fully describe  
24 the context in which this e-mail was sent?

25 A. I believe this e-mail was sent in the

1 context of trying to understand where Enigma's  
2 collateral was.

3 Q. And is another way to say that, this  
4 e-mail was sent in aid of identifying Enigma's  
5 collateral that was being abandoned?

6 MR. MANN: Objection. Asked and  
7 answered.

8 THE WITNESS: I believe the context of  
9 this was to identify locations or LIDs that were  
10 rejected and where the debtor's records indicated  
11 certain machines might be relative to those location  
12 IDs.

13 BY MR. KISSNER:

14 Q. Do you recall that there was some  
15 confusion around the time of March 2023 as to which  
16 leases were for locations at which Enigma's  
17 collateral was located?

18 MR. MANN: Objection. Form.

19 THE WITNESS: I do remember Enigma  
20 having that concern and I do remember us undergoing  
21 the reconciliation of the inventory.

22 BY MR. KISSNER:

23 Q. Okay. So would it be fair to say, then,  
24 that Enigma was having some trouble identifying its  
25 collateral that was being abandoned?



1 A. Yes.

2 Q. And so would it be fair to say that this  
3 e-mail was sent requesting assistance in identifying  
4 that collateral?

5 MR. MANN: Objection. Speculation.

6 BY MR. KISSNER:

7 Q. I could rephrase.

8 Does this e-mail appear to have been  
9 sent in order to obtain assistance in identifying  
10 Enigma's collateral?

11 A. It appears that this e-mail is pointing  
12 out discrepancies in the data as it relates to the  
13 rejection motions and which collateral -- or where  
14 certain collateral was as it relates to those  
15 rejection motions.

16 Q. And in response to that request, you  
17 said that there had been 537 LIDs marked as  
18 rejected, correct?

19 MR. MANN: Objection. Form.

20 THE WITNESS: I believe I said, "The  
21 result of the reconciliation was that there are 537  
22 LIDs marked as rejected that also appear in Enigma's  
23 UCC schedule."

24 BY MR. KISSNER:

25 Q. So you did not send this response to

1 help Enigma identify its collateral?

2 A. I believe we sent the file, which gave  
3 Enigma the same information we had about where the  
4 collateral was and who likely encumbers that  
5 collateral, at least on a first lien basis.

6 BY MR. KISSNER:

7 Q. So then tell me, how would you identify  
8 collateral as belonging to a particular secured  
9 lender?

10 MR. MANN: Objection to form.

11 THE WITNESS: I believe the best way to  
12 identify the collateral would be to physically  
13 inventory the serial numbers on the hardware, as my  
14 understanding from conversations with counsel.

15 BY MR. KISSNER:

16 Q. Do you know if all of the debtor's  
17 kiosks had serial numbers?

18 A. I don't believe they do, based on my  
19 conversations with employees of the company and  
20 former employees of the company, but I believe that  
21 most of them do.

22 Q. Okay. And you said that the best way to  
23 identify collateral would be to physically inspect  
24 the machine; is that correct?

25 MR. MANN: Object to form.

1 THE WITNESS: My understanding, based on  
2 what I've learned to this point today, is that  
3 physically looking at the serial number on a machine  
4 would be the most reliable way of identifying who  
5 had a lien on that machine.

6 BY MR. KISSNER:

7 Q. That's fine. It's not a trick question.  
8 I was just -- I thought a minute ago you said that  
9 the best way to identify collateral would be a  
10 physical inspection, so I just wanted to make sure I  
11 had that right.

12 Would it be fair to say that there's  
13 other ways by which one could identify collateral,  
14 even if not the best?

15 A. The next best would likely be using the  
16 debtor's records of the serial numbers, at least in  
17 identifying if a machine sitting in front of you or  
18 a machine in any particular location belonged or was  
19 encumbered by a lender. The debtor's records would  
20 be the next best.

21 Q. And to be clear I have that right, by  
22 "debtor's records," you mean the debtor's records of  
23 machine serial numbers?

24 A. Yes.

25 Q. Is there a way to identify collateral

1 that doesn't have a serial number?

2 A. A machine that doesn't have a serial  
3 number -- though I don't know if this is legally  
4 true -- you could try to match up the software and  
5 location IDs, though that doesn't guarantee the  
6 hardware is the same hardware that had that software  
7 ID or LID previously, if it was moved or  
8 reprogrammed at some point prior to you inspecting  
9 that machine.

10 Q. Okay. So one way of identifying  
11 collateral then is by software ID?

12 MR. MANN: Objection to form.

13 THE WITNESS: Only if that software ID  
14 for that hardware has never changed.

15 BY MR. KISSNER:

16 Q. Okay. And another way to identify  
17 collateral, if not the best, a way to identify  
18 collateral is location ID?

19 A. I don't know if -- legally if a location  
20 is a proper way of identifying collateral, but if  
21 the machine had never moved, you could assume that  
22 that was the same machine that was previously  
23 encumbered.

24 Q. Okay. Could we go back to Exhibit 7,  
25 which is the spreadsheet that's in front of you, I

1 believe. Do you have it open?

2 A. Yes.

3 Q. Okay. Could you go to cell I-4?

4 A. Yes.

5 Q. And can you tell me what I-4 says?

6 A. 3,301.

7 Q. Is it 3,301 or 3,303?

8 A. I apologize. I misspoke. 3,303.

9 Q. And what do you understand that number  
10 to represent?

11 A. My memory of the spreadsheet is that  
12 this -- this is the count of LIDs that the debtor  
13 believed also appeared in Enigma's UCC.

14 Q. So is it fair to say that if one were to  
15 attempt to identify collateral by LID, then  
16 approximately 3,300 machines would be -- that's a  
17 terrible question. Please strike that.

18 Can you tell me what "CCID" is?

19 A. Yes. From my understanding of  
20 conversations with employees and former employees,  
21 the CCID is an ID not physically on the machine --  
22 not always physically on the machine, but that is  
23 sometimes an ID of the software on the machine, sort  
24 of like a name.

25 Q. Before, you referred to a software ID.

1 Is that the same thing as CCID?

2 A. I think in most instances, yes. There  
3 were -- oh, actually, I apologize. Yes, the CCID is  
4 the software ID. Those are the same.

5 Q. Okay. And can you look at cell J-4?

6 A. Yes.

7 Q. And can you tell me what it says?

8 A. 3,676.

9 Q. And what do you understand that number  
10 to represent?

11 A. Without directly checking, it sounds  
12 like the number Enigma listed in its UCC filing.

13 Q. And by that you mean the number of  
14 machines with a corresponding software ID that  
15 matched the debtor's books and records?

16 A. Sorry. I think I maybe misunderstood  
17 your question.

18 This cell is the number of CCIDs. Maybe  
19 it was referenced differently in the UCC schedule.  
20 The number of CCIDs in the debtor's records that  
21 also matched an Enigma UCC CCID.

22 Q. Okay. We're on the same page. Okay.  
23 And then finally, can you go over to  
24 cell H-4?

25 A. Yes.

1 Q. Can you tell me what it says?

2 A. 3,092.

3 Q. Can you tell me what you understand that  
4 number to represent?

5 A. The number of serial numbers in the  
6 debtor's records that matched a serial number in  
7 Enigma's UCC schedule, or at least the Excel version  
8 that was used in this analysis.

9 Q. Okay. And I know the -- we all want to  
10 stop looking at this spreadsheet so I'm going to try  
11 and sum up.

12 So would it be fair to say that, based  
13 off of LID, this document would suggest that 3,303  
14 machines were pledged to Enigma?

15 A. Sorry. Can you repeat your question?

16 MR. KISSNER: Could you read it back.

17 (The record is read by the reporter.)

18 THE WITNESS: If you were to conclude  
19 that LID's an indicator of encumbrance, yes, if you  
20 were to only use LID.

21 BY MR. KISSNER:

22 Q. So if you were to use LID, this document  
23 would suggest that there were 3,303 kiosks in  
24 Enigma's collateral package, correct?

25 A. Or at least that appeared in the UCC

1 schedule.

2 Q. Correct, but if we assume that's right  
3 and we assume -- this is a legal conclusion, but if  
4 I were to tell you that LID was relevant to this,  
5 then based off of this document, it would appear  
6 that 3,303 of the debtor's kiosks were pledged to  
7 secure Enigma's loan, correct?

8 A. Yes, assuming there were no other  
9 identifiers that contradicted it.

10 Q. Okay. And if one were to use serial  
11 numbers to identify collateral, then this document  
12 would suggest that 3,092 machines were pledged to  
13 secure Enigma's loan, correct?

14 A. Correct.

15 Q. And if one were to assume that CCID or  
16 software ID could be used to identify collateral,  
17 then this document would suggest that 3,676 machines  
18 were pledged to secure Enigma's loan, correct?

19 A. Correct. At this time -- sorry, at the  
20 time of this document.

21 Q. Do you recall if the -- the UCC filing  
22 that we were discussing earlier, that suggested that  
23 Enigma's collateral consisted of 3,677 machines,  
24 correct?

25 MR. MANN: Object to form.



1 THE WITNESS: Yes, I remember that  
2 conversation.

3 BY MR. KISSNER:

4 Q. You recall that? Okay.

5 And do you recall the security agreement  
6 that we were discussing before, that also says that  
7 3,677 machines are Enigma's collateral, correct?

8 MR. MANN: Object to form.

9 THE WITNESS: Yes.

10 BY MR. KISSNER:

11 Q. Okay. And 3,677, that's pretty close to  
12 3,676, wouldn't you say?

13 A. Yes.

14 Q. Okay. And 3,676, then, is the number of  
15 machines listed in this spreadsheet, by CCID, as  
16 belonging to Enigma, correct?

17 A. Sorry, you said 3,676?

18 Q. Correct.

19 A. Yes.

20 Q. So would it be fair to say, then, that  
21 the security agreement and the UCC filing, they  
22 appear to identify Enigma's collateral based off of  
23 CCID?

24 A. Yes, they appear to.

25 MR. KISSNER: Okay. I think we can turn

1 off the Excel for now.

2 So I was thinking we'd break for lunch  
3 at around 1:00. That's like in an hour.

4 MR. MANN: Sure.

5 BY MR. KISSNER:

6 Q. Okay. I'm going to ask you to go to  
7 Tab 7 in your binder.

8 And I'm going to ask the reporter to  
9 mark that as Exhibit 9, I think we're up to?

10 (Exhibit 9 marked.)

11 BY MR. KISSNER:

12 Q. Are you there?

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. Can you describe what it is?

17 A. This is a term sheet summarizing the  
18 material terms of the DIP facility with CKDL Credit.

19 Q. And who's CKDL Credit?

20 A. The debtor's post-petition DIP financier.

21 Q. Okay. So would it be fair to  
22 characterize this, then, as a term sheet received  
23 from the DIP lender for a proposed DIP loan?

24 A. Yes.

25 Q. If we turn to Schedule 1 of this

1 document, which is the second-to-last page, do you  
2 know what this is?

3 A. Yes.

4 Q. What is it?

5 A. This is a 13-week cash flow for Coin  
6 Cloud's Chapter 11 bankruptcy.

7 Q. And what's a "13-week cash flow" in  
8 general terms?

9 A. Forecast of the debtor's cash receipts  
10 and disbursements.

11 Q. 13-week cash flows are pretty common in  
12 most bankruptcy cases, in your experience; is that  
13 fair to say?

14 A. Yes.

15 Q. Did you prepare the 13-week cash flow?

16 A. With assistance from counsel and other  
17 members of Province, yes.

18 Q. And do you know when this was prepared?

19 A. I don't know when this particular  
20 version was prepared --

21 Q. Okay. Well --

22 A. -- off the top of my head.

23 Q. And that's fair. It's not a memory  
24 test.

25 Can you flip back, I guess, two pages to

1 pages eight and nine of Exhibit 9, which remains  
2 Tab 7?

3 A. Got it. I'll never get the hang of it.

4 Q. Nor do I.

5 A. You said pages eight and nine?

6 Q. Yeah, pages eight and nine. I think  
7 you're there.

8 Could you describe what pages eight and  
9 nine to this exhibit are?

10 A. Signatures to the term sheet with CKDL  
11 that is executed by John Crane and Christopher  
12 McAlary.

13 Q. And do Mr. Crane's and Mr. McAlary's  
14 signatures have dates next to them?

15 A. Yes.

16 Q. And what date is that?

17 A. January 23, 2023.

18 Q. So does that reflect -- sorry. Strike  
19 that.

20 Does that refresh your recollection as  
21 to when this 13-week cash-flow forecast may have  
22 been created?

23 A. Yes. It must have been at least around  
24 then, if not before.

25 Q. And by "around then," you mean the

1 13-week cash-flow statement was likely prepared on  
2 or about January 23, 2023?

3 A. Yeah. I would conclude that, based on  
4 that.

5 Q. In preparing for this -- I confess I did  
6 this on a screen -- I did not realize how small the  
7 text was going to be on the page.

8 But assuming that you can read that, I'm  
9 in the first column of this spreadsheet. Can you go  
10 down to where it says "kiosk cash."

11 A. Yes.

12 Q. Can you tell me what "kiosk cash" refers  
13 to?

14 A. Kiosk cash is the debtor's record of how  
15 much cash is spread across its fleet of kiosks.

16 Q. And if you go one row down to "beginning  
17 balance," do you see that?

18 A. Yes.

19 Q. And if you go two columns over, still in  
20 the row "beginning balance," it's a column that says  
21 at the top "petition date week one." Do you see  
22 that?

23 A. Yes.

24 Q. Can you read for me the amount in that  
25 column?

1 A. In the beginning balance?

2 Q. Yes.

3 A. \$5,221,473.

4 Q. So do you understand this to mean that,  
5 at least at this time, there was projected to be  
6 about \$5.2 million in the debtor's kiosks as of the  
7 week ending January 30th, 2023?

8 A. Yes.

9 Q. And staying in that row, can you go one  
10 column over to where it says "week two"?

11 A. Yes.

12 Q. Can you read to me what that says?

13 A. The beginning balance?

14 Q. Yes.

15 A. \$5,221,473.

16 Q. Okay. And do you understand this to  
17 mean that there was approximately \$5.2 million  
18 projected to be in the debtor's kiosks as of the  
19 week ending February 6th?

20 A. Yes.

21 Q. Okay. Great.

22 Could you turn to Tab 6 in your binder,  
23 which I guess for now is Exhibit 10.

24 MR. KISSNER: Can you mark that. Thank  
25 you.

1 (Exhibit 10 marked.)

2 BY MR. KISSNER:

3 Q. And are you there?

4 A. Yes.

5 Q. Great. Okay.

6 Do you recognize this document?

7 A. Yes.

8 Q. Can you tell me what it is?

9 A. It's a revised motion for interim and  
10 final orders authorizing the debtor to obtain  
11 post-petition, senior secured, superpriority  
12 financing, granting liens and superpriority claims,  
13 modifying the automatic stay, scheduling final  
14 hearing and granting related relief among other  
15 things.

16 Q. So would it be fair to say, in plain  
17 English, this was a motion to approve a DIP loan for  
18 the debtor?

19 A. Yes.

20 Q. Could you turn to the second-to-last and  
21 final page.

22 Are you there?

23 A. You're referring to the budget?

24 Q. Yeah, I'm referring to Exhibit A to the  
25 interim DIP order. Do you see that?

1 A. Yes.

2 Q. Do you know what Exhibit A to the  
3 interim DIP order is?

4 A. Yes, it's a 13-week cash-flow budget.

5 Q. Okay. Do you recall if this was a  
6 revised version of the 13-week cash-flow forecast we  
7 were looking at before that was marked as Exhibit 9?

8 A. I don't recall this particular version,  
9 but I know that the light blue likely means that it  
10 was a period of actuals.

11 Q. Okay. Fair. Sorry, not a trick  
12 question.

13 So this is also a 13-week cash-flow  
14 forecast, correct?

15 A. Yes.

16 Q. And the column in light blue that says  
17 week zero, you said that likely indicates it was  
18 based off of actual data?

19 A. Yes.

20 Q. Did you prepare this Exhibit A to the  
21 interim DIP order?

22 A. Yes, or at least helped prepare.

23 Q. Who else would have helped prepare it?

24 A. I would have gotten comments from both  
25 counsel and other members of Province.



1 Q. And when you say "counsel," you mean  
2 counsel to the debtor --

3 A. Yes.

4 Q. -- or somebody else?

5 Okay.

6 A. Counsel to the debtor.

7 Q. And do you know when this revised  
8 cash-flow forecast was prepared?

9 A. Off the top of my head, I do not, but  
10 before February 13th --

11 Q. Okay.

12 A. -- and likely after January 30th.

13 Q. Fair enough.

14 And so again, I'm going to ask you to go  
15 to the first column down to where it says "kiosk  
16 cash."

17 A. Okay.

18 Q. "Kiosk cash" still refers to cash in the  
19 debtor's kiosks, fair?

20 A. Yes.

21 Q. And if you could go down one row to  
22 beginning balance, and then one column over to week  
23 zero, and can you read what that says. Sorry, this  
24 one seems even smaller than the last.

25 A. Five -- sorry -- \$5,328,167.

1 Q. So do you understand this to mean that  
2 there was approximately \$5.3 million of cash  
3 actually in the kiosks as of the week ending  
4 January 30th?

5 A. Yes.

6 Q. And can we go one column over to  
7 "petition date," and can you read the number there,  
8 same row?

9 A. \$5,380,061.

10 Q. And so do you understand this to mean  
11 that there was approximately \$5.4 million projected  
12 to be in the kiosks as of the week ended  
13 February 6th?

14 A. At least at the beginning of the week,  
15 yes.

16 Q. So if a lender had foreclosed on kiosks,  
17 there would have been some cash inside the machines  
18 then, fair?

19 A. Inside of the machines foreclosed on?

20 Q. Yeah.

21 A. Yes.

22 Q. And based off of this revised cash-flow  
23 forecast -- and I realize these are estimates -- but  
24 if all of the machines had been foreclosed and  
25 repossessed, there would have been somewhere around

1 5.3 or \$5.4 million inside all of the machines?

2 MR. MANN: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. KISSNER:

5 Q. Okay. So if Enigma had foreclosed on  
6 its machines in January, say, there would have been  
7 some cash inside of the machines?

8 MR. MANN: Objection to form.

9 THE WITNESS: Assuming there was cash in  
10 those particular machines.

11 BY MR. KISSNER:

12 Q. That's fair.

13 Do you have any sense of how much cash  
14 was inside Enigma's machines in January of 2023?

15 A. No, I do not.

16 Q. And I'm not asking you to speculate,  
17 just asking if you're aware.

18 A. Not at this moment, no. I don't  
19 remember doing that analysis.

20 Q. Okay. And do you recall how much --  
21 strike that.

22 Do you know how much cash would have  
23 been in Enigma's machines the week ending  
24 February 6th?

25 A. No. The debtor may have been able to

1 produce those records, but I do not know right now.

2 Q. Would you be able to estimate how much  
3 cash were in Enigma's machines --

4 A. No.

5 Q. -- at that time? Okay.

6 Well, do you know how many kiosks the  
7 debtor owns in total?

8 A. The records, as I remember, are -- show  
9 above 7,000, at least at the beginning of the  
10 Chapter 11.

11 Q. And do you recall how many kiosks were  
12 in the field?

13 A. I believe around, if not a little above  
14 5,000.

15 Q. Okay. If I were to say 5700, does that  
16 ring a bell?

17 A. Yes.

18 Q. Okay. And, before, we established that,  
19 assuming that CCID is a relevant manner of  
20 identifying collateral, that about 3700 of the  
21 debtor's kiosks are Enigma's?

22 A. I believe about 3700 of the kiosks had  
23 CCIDs listed in Enigma's UCC filing.

24 Q. Sure. But if we were to assume that  
25 having a listed CCID meant that a machine was

1 Enigma's collateral, which is a legal conclusion,  
2 but if we were to make that assumption, then about  
3 3700 machines were pledged to Enigma, correct?

4 A. Yes, assuming AV Tech didn't also have a  
5 claim to those machines.

6 Q. Okay. But assuming that nobody else had  
7 a claim on those machines, then you recall that  
8 approximately 3700 machines could be Enigma's?

9 A. Yes.

10 Q. And if one were to divide 3700 by 5700,  
11 say, would that represent a rough proportion of how  
12 many machines were Enigma's?

13 A. Sorry, can you rephrase your question?

14 Q. Sure. So we established that, at least  
15 under one metric, Enigma had approximately 3700  
16 machines pledged to it, right?

17 A. (Nods head in the affirmative.)

18 Q. And we also established -- or you seem  
19 to recall that somewhere in the ballpark of 5700  
20 machines are in the field, right -- or were in the  
21 field at this time, right?

22 A. Yes.

23 Q. So if one were to divide 3700 by 5700,  
24 that would roughly represent the proportion of field  
25 machines that are Enigma's?

1 MR. MANN: Object to form.

2 THE WITNESS: Yes.

3 BY MR. KISSNER:

4 Q. And so if one were to want to come up  
5 with an estimate of how much cash was in machines  
6 pledged to Enigma at a given time, could a rough  
7 estimate of that be obtained by taking the  
8 percentage of machines pledged to Enigma and  
9 multiplying it by \$5.3 million?

10 MR. MANN: Object to form.

11 THE WITNESS: Yes, assuming no cash is  
12 in the machines in the warehouses or other storage,  
13 and assuming that the reporting of the cash was  
14 correct.

15 BY MR. KISSNER:

16 Q. That's fair.

17 Do you recall, did Enigma ever actually  
18 foreclose on its collateral?

19 A. I do not recall.

20 Q. If I were to tell you that Enigma didn't  
21 foreclose on its collateral, would you have a reason  
22 to think that's inaccurate?

23 A. No, not to my knowledge.

24 Q. And do you have any understanding or  
25 recollection of why Enigma didn't foreclose on its

1 collateral?

2 A. I do not.

3 Q. Do you recall if Enigma had entered into  
4 a forbearance agreement with the company at any  
5 point?

6 A. I've certainly seen forbearance  
7 agreements with Enigma, between Enigma and the  
8 company.

9 Q. And are you familiar with what a  
10 forbearance agreement is, generally speaking?

11 A. Yes.

12 Q. If a lender and a borrower were party to  
13 a forbearance agreement, in your experience would  
14 that lender be permitted to foreclose on its  
15 collateral?

16 A. I'm not sure I know the answer to that.  
17 I would assume it would be circumstantial.

18 Q. That's fair enough.

19 So you said you recall seeing  
20 forbearance agreements for Enigma and the company at  
21 some point?

22 A. Yes.

23 MR. KISSNER: Could we go to Tab 8,  
24 which I'll ask be marked as Exhibit 11.

25 (Exhibit 11 marked.)

1 BY MR. KISSNER:

2 Q. Have you seen this document before? Do  
3 you recognize it?

4 A. I'm not sure I've seen this particular  
5 document, but the form of it looks similar to the  
6 others that I believe I've seen.

7 Q. And can you tell me what this document  
8 appears to be, then?

9 A. A conditional forbearance letter in  
10 relation to an \$8 million secured loan facility  
11 between Cash Cloud, the borrower, and Enigma  
12 Securities Limited, the lender.

13 Q. Can you go to Tab 9, which would be  
14 Exhibit 12.

15 (Exhibit 12 marked.)

16 BY MR. KISSNER:

17 Q. Do you recognize this document?

18 A. I recognize it in that it looks similar  
19 to the last and one of the maybe more recent  
20 forbearance letters that Enigma has had with Coin  
21 Cloud.

22 Q. So this appears to also be a forbearance  
23 agreement, fair?

24 A. Yes.

25 Q. And then could you turn to Tab 10, which



1 I'll ask be marked as Exhibit 13.

2 (Exhibit 13 marked.)

3 BY MR. KISSNER:

4 Q. Do you recognize this document?

5 A. In that it's similar to the last and  
6 others that I may have seen, yes. I believe I may  
7 have seen the third. This is maybe where the  
8 debtor's records have been given to us that we've  
9 seen.

10 Q. So what does this document, Exhibit 13,  
11 appear to be?

12 A. Another conditional forbearance letter,  
13 the third.

14 Q. And can you look at paragraph A?

15 A. Yes.

16 Q. And can you read the first sentence?

17 A. "The maturity date of the loan occurred  
18 on October 11th, 2022."

19 Q. And do you understand "the loan," that  
20 refers to the Enigma secured loan that we've been  
21 talking about today?

22 A. That makes sense.

23 Q. Okay. And can you go to the next page,  
24 to paragraph G?

25 A. Yes.

1 Q. And can you read that sentence?

2 A. "Subject to borrower's satisfaction of  
3 the conditions precedent set forth immediately below  
4 in this paragraph G, lender hereby agrees to  
5 conditionally forbear, the conditional forbearance,  
6 from exercising its rights and remedies under the  
7 loan documents or applicable law arising from the  
8 subject default during the forbearance period  
9 defined below."

10 Q. Okay. So in English, this says that  
11 Enigma is going to forbear from exercising rights  
12 and remedies during a defined period; is that fair?

13 MR. MANN: Objection to form.

14 THE WITNESS: It agrees to conditionally  
15 forbear from exercising its rights and remedies  
16 under the loan documents, or applicable law arising  
17 from subject default during the forbearance period.  
18 BY MR. KISSNER:

19 Q. Could you go to the next page,  
20 Paragraph L.

21 A. Yes.

22 Q. And can you read what paragraph L says?

23 A. "For the purpose of this letter  
24 agreement, forbearance period means the period  
25 commencing on February 2nd, 2023, and terminating on

1 the earliest to occur of the following, 11:59 p.m.  
2 PST on February 8th, 2023, and the date of default  
3 by borrower under this letter agreement or any  
4 further default under the terms of the other loan  
5 documents other than the subject default."

6 Q. Do you know when the debtor filed for  
7 bankruptcy?

8 A. I believe it's February 7th, 2023, or  
9 8th, one of the two.

10 Q. So would it be fair to say that, at the  
11 time of the bankruptcy filing, Enigma remained  
12 subject to this forbearance agreement?

13 MR. MANN: Objection to form.

14 THE WITNESS: Sorry. Could you repeat  
15 your question.

16 MR. KISSNER: Sure. Can you read that  
17 back.

18 (The record is read by the reporter.)

19 MR. MANN: I don't even like object that  
20 this is going beyond the topics that we presented  
21 him here for. This isn't relating to the  
22 collateral, this is specifically the forbearance  
23 with Enigma which we wanted Chris to be the one that  
24 talks about the relationship with Enigma.

25 MR. KISSNER: Yeah, I understand. I'm

1 not quizzing him on this, I'm trying to lay a  
2 foundation that's relevant to whether Enigma  
3 received a benefit from the surcharge, which is one  
4 of the elements of the claim. I promise we're  
5 almost done with this.

6 MR. MANN: Okay.

7 THE WITNESS: I apologize. Can you  
8 repeat it one more time.

9 BY MR. KISSNER:

10 Q. Here, we'll try it a different way.

11 So this says -- and by "this" I mean the  
12 forbearance agreement -- says that until the earlier  
13 of a default of the borrower under the forbearance  
14 agreement or February 8th at 11:59, Enigma agrees to  
15 forbear from exercising its rights and remedies  
16 under the loan agreement, correct?

17 A. Generally, without context of the rest  
18 of the document, yes.

19 Q. And if -- assuming that the borrower was  
20 not in default under the forbearance agreement --  
21 sorry. Strike that.

22 You said that the bankruptcy was  
23 commenced on February 7th?

24 A. I believe so, yes.

25 Q. Okay. So assuming that the borrower was

1 not in default under this forbearance agreement,  
2 that February 7th would have been before the  
3 expiration of this agreement?

4 A. If the petition date was not  
5 February 8th, yes.

6 Q. Fair enough.

7 I think that's all I have on that one.

8 MR. KISSNER: What time is it? Oh,  
9 perfect. Sorry, I just want to make sure I'm not  
10 missing anything.

11 BY MR. KISSNER:

12 Q. Okay. Could we turn back to Tab 3 in  
13 your binder, which I believe was marked as  
14 Exhibit 2.

15 Are you there?

16 A. Yes.

17 Q. And this was your surcharge declaration,  
18 correct?

19 A. Yes.

20 Q. Can you turn to Exhibit A to the  
21 surcharge declaration, which is on page 8.

22 A. Yes.

23 Q. Okay. And if I refer -- you might have  
24 done this before, but I just -- there's a lot of  
25 documents. I don't want there to be confusion.

1 If I refer to this as your "surcharge  
2 analysis," you'll understand I'm referring to  
3 Exhibit A?

4 A. Yes.

5 Q. Could you walk me through the chart on  
6 the first page of Exhibit A?

7 A. Sure. It's a preliminary sale analysis  
8 subject to material change, prepared at the request  
9 of counsel. All amounts are estimates and not  
10 guarantees of actual results, with an inventory  
11 summary by unit number -- sorry -- by number of  
12 units, and the distribution of machines by either  
13 warehouse or field, with a count of how many  
14 machines the debtor believes, based on its records,  
15 are either belonging to Enigma, Genesis or AV Tech,  
16 either in the warehouse or warehouses or in the  
17 field, and the number of machines the debtor's  
18 records estimate are included in the sale of these  
19 assets.

20 Q. Okay. And can you go to the second  
21 page. Can you walk me through that chart. What  
22 does it say or what is it?

23 A. It's a preliminary sale analysis subject  
24 to material change, prepared at the request of  
25 counsel, with all amounts estimates, not guarantees

1 of actual results, with adjustments to proceeds to  
2 the lenders from the sale, which breaks down costs  
3 proposed to be surcharged from storing the machines  
4 in warehouses -- to protect them from further  
5 destruction or any destruction of their value -- for  
6 \$518,000, with a footnote that reads "includes seven  
7 months of Deployment Logix invoices at an estimated  
8 40,000 a month; two, future months of storage with  
9 Morningstar Storage at an estimate of 4K a month;  
10 and three, Trangistics estimated accrued but unpaid  
11 admin claim of pay of \$230,000; and amounts are  
12 subject to change upon further invoice review by the  
13 independent director."

14 The next section relates to sale-related  
15 costs proposed to be surcharged, an amount of  
16 \$1.58 million approximately with a footnote that  
17 reads "includes \$126,000 Province sale fee;  
18 approximately \$27,000 of sale-related noticing costs  
19 from Stretto; and approximately 1.4 million of other  
20 sale-related professional fees; professional fees  
21 related to the marketing process may increase with  
22 future fee applications."

23 There are two additional notes that  
24 disclose that this does not include the warehouse  
25 lien from Trangistics, and charges each secured

1 creditor for costs of storage based on the percent  
2 of total units in storage multiplied by the total  
3 storage costs.

4 Q. And not asking for a legal opinion, but  
5 what do you understand the term "surcharge" to mean?

6 A. A charge proposed to be reduced from the  
7 proceeds of the sale in order to preserve -- for  
8 costs that were meant to preserve the value of the  
9 collateral being sold.

10 Q. So is it fair to say then that this  
11 chart on page 2 of your surcharge analysis  
12 summarizes costs to be surcharged and allocates them  
13 to various lenders?

14 A. Correct. But most importantly, the  
15 total amount of the costs related to the surcharge.  
16 As we know, there are disputes over who encumbers  
17 what collateral.

18 Q. Understood. And that's a fair point.  
19 But in broad strokes, this is just a  
20 summary of costs to be surcharged and then a  
21 proposal of how to allocate those costs among  
22 lenders?

23 A. Correct.

24 Q. Okay. And the chart on page 1 of the  
25 surcharge analysis, would it be fair to say that



1 this is a summary of your -- sorry. Strike that.

2 Would it be fair to say that the chart  
3 on page 1 of your surcharge analysis summarizes the  
4 number of machines that you have identified as being  
5 pledged to each lender?

6 A. Yes, that were included in the sale  
7 specifically.

8 Q. Okay. And so the allocation on page 2  
9 to lenders is based off of the machine counts on  
10 page 1; is that fair to say?

11 A. Yes.

12 Q. Okay. So your surcharge analysis, it  
13 looks like it allocates some costs to Enigma, right?

14 A. Correct.

15 Q. How did you determine which costs to be  
16 allocated to Enigma?

17 A. Can you clarify, any particular group of  
18 costs?

19 Q. Just generally. We can take an example.  
20 How about that?

21 So if you look at note one on the chart,  
22 it says that the warehouse costs included seven  
23 months of Deployment Logix invoices at an estimated  
24 40,000 a month. Do you see that?

25 A. Yes.

1 Q. Did you allocate some of those  
2 Deployment Logix invoices to Enigma?

3 A. Yes.

4 Q. So how did you determine which  
5 Deployment Logix invoices' invoiced costs should be  
6 allocated to Enigma?

7 A. The surcharge costs related to the  
8 warehouse accruals are not allocated based on which  
9 warehouse they're stored in.

10 Q. How are they allocated?

11 A. They're allocated based on the total  
12 aggregate amount of warehouse costs set forth in  
13 this analysis relative to the number of machines the  
14 debtor estimates are in the warehouses in the  
15 aggregate.

16 Q. And then how are those costs then  
17 allocated to Enigma?

18 A. As a percent of the total number of  
19 machines in warehouses relative to the percent of --  
20 sorry.

21 It's just based on the percent of total  
22 machines in the warehouses. So for example,  
23 Enigma's 717 machines relative to the total 2,189  
24 machines, as a percentage, multiplied by the total  
25 costs of warehouse fees in this analysis.

1 Q. Okay. Great.

2 And so then to take another example, do  
3 you see note two to your chart that says "includes  
4 126,000 Province sale fee"?

5 A. Yes.

6 Q. Okay. Is any of that sale fee allocated  
7 to Enigma?

8 A. I believe, based on my memory, that all  
9 of the professional fees are allocated based on a  
10 percent of the lenders' machines over the total  
11 number of machines, so --

12 Q. Okay. Sorry, I didn't mean to cut you  
13 off.

14 A. That's okay.

15 It's essentially distributed based on  
16 how many machines the lender encumbers based on the  
17 books and records.

18 Q. Okay. So some of the Province sale fee  
19 was allocated to Enigma?

20 A. Yes.

21 Q. And that allocation was done based off  
22 of the proportion of machines identified as being  
23 pledged to Enigma versus all machines that were  
24 sold, fair?

25 A. Yes.

1 Q. So staying here, this surcharge  
2 analysis, it includes some costs incurred by  
3 Trangistics; is that correct?

4 A. Yes, costs invoiced to the debtor by  
5 Trangistics.

6 Q. Who's Trangistics?

7 A. Trangistics, to my understanding, is a  
8 broker or a third-party logistics company that  
9 facilitates storage of some of the debtor's  
10 machines.

11 Q. Do you know if Trangistics owns any  
12 warehouses?

13 A. My understanding is they do not own the  
14 warehouse these machines are in. I don't know if  
15 they own any warehouses.

16 Q. Fair enough.

17 Do you understand Trangistics to  
18 actually provide storage services or something else?

19 A. My understanding is that Trangistics  
20 facilitates -- or facilitated for the company  
21 storage of these machines in a warehouse that was  
22 climate-controlled and well-guarded to protect the  
23 machines.

24 Q. And do you know how much -- strike that.  
25 You said that certain amounts invoiced

1 by Trangistics are included in the surcharge  
2 analysis, correct?

3 A. Yes.

4 Q. Do you know how much?

5 A. Off the top of my head, I don't remember  
6 the total amount specifically related to  
7 Trangistics.

8 Q. Okay. Could you look at note one to  
9 this chart and then Romanette three and read what it  
10 says?

11 A. Yes. Sorry. "Trangistics estimated  
12 accrued but unpaid admin claim of \$230,000," which I  
13 believe included at least a couple months of  
14 estimated costs.

15 Q. Okay. So does that refresh your  
16 recollection as to how much of Trangistics' costs  
17 are included in your surcharge analysis?

18 A. Yes.

19 Q. How much?

20 A. At least 230,000.

21 Q. Okay. Could we turn to Tab 25 in the  
22 binder, which I think should be marked as  
23 Exhibit 14.

24 (Exhibit 14 marked.)

25 ///

1 BY MR. KISSNER:

2 Q. And have you ever seen this document  
3 before?

4 A. I have not seen this document.

5 Q. Can you tell me what it appears to be?

6 A. This is a transcript of motion to reject  
7 lease or executory contract for Cash Cloud. It  
8 looks like the tenth omnibus for order of entry  
9 approving rejection of executory contracts and  
10 unexpired leases.

11 Q. Could you turn to page 2.

12 A. Yes.

13 Q. Could you go to the second item listed?

14 A. Application for administrative claim for  
15 Trangistics, is that what you're referring to?

16 Q. Correct.

17 Could you read that?

18 A. "Application for administrative claim  
19 approval filed by Marjorie A." -- apologies if I  
20 butcher this -- "Guymon on behalf of Trangistics,  
21 Inc."

22 Q. So this document appears to be a  
23 transcript of a hearing at which Trangistics sought  
24 approval of an administrative claim.

25 A. Yes.

1 Q. Fair? Okay.

2 Could you turn to page 21 of Exhibit 14.

3 And the numbers are up in the top right corner.

4 A. Okay.

5 Q. Can you go to the bottom, to line 23.

6 Do you see where it says "Ms. McPherson"?

7 A. Yes.

8 Q. Do you know who Ms. McPherson is?

9 A. Yes.

10 Q. Who is she?

11 A. She's a attorney with Fox Rothschild.

12 Q. Is she the company's attorney?

13 A. Yes, she is one of the attorneys for the  
14 company.

15 Q. Could you turn to the next page,  
16 page 22.

17 A. Yes.

18 Q. Could you read what it says starting on  
19 line 3?

20 A. "There's an agreement between the  
21 actual -- what appears to be the actual warehouse  
22 owner, Powerhouse, and Trangistics who is the broker  
23 for an amount. And then there's -- there was e-mail  
24 correspondence regarding the storage of these kiosks  
25 with the debtor for a different amount other than

1 the 38,600."

2 Q. Okay. Do you have a sense of -- sorry.  
3 Strike that.

4 So 38,600, do you understand that to be  
5 the amount that Trangistics alleged that it was owed  
6 on a monthly basis by the debtor?

7 A. Yes.

8 Q. Do you recall if 38,600 per month is the  
9 figure used in your surcharge analysis?

10 A. I believe so, yes, for at least the  
11 estimated periods. If not, it was 38,000 flat. I  
12 don't recall which of the two.

13 Q. Okay. And if you could go down to  
14 line 14 of the transcript.

15 A. On page 22?

16 Q. Yeah, same page.

17 A. 14?

18 Q. Yes. Can you read the first full  
19 sentence on that line, continuing to the next line.

20 A. "And it's our understanding that the  
21 warehouse actually charges significantly less,  
22 30,500."

23 Q. So the \$30,500-a-month figure, that was  
24 not used in your surcharge analysis, correct?

25 A. Correct. For Trangistics, yeah.



1 Q. Do you think that Trangistics' services  
2 were necessary for the sale of the collateral?

3 A. I believe they were necessary to store  
4 the collateral during the sale process.

5 Q. And do you think that the fees charged  
6 by Trangistics were necessary to preserve the  
7 collateral for the sale process?

8 A. I believe they are similar to Deployment  
9 Logix, from my review of the invoices, the other  
10 warehousing party.

11 Q. Sorry, you understand what is similar to  
12 Deployment Logix?

13 A. I apologize. Can you maybe rephrase  
14 your question?

15 Q. Sure. So you said that you think that  
16 the services provided by Trangistics were necessary  
17 to preserve the collateral for the sale process,  
18 correct?

19 A. Yes. And I believe that there may not  
20 have been an alternative, given Trangistics'  
21 uncooperativeness at some points.

22 Q. Can you tell me what you mean by  
23 "uncooperativeness"?

24 A. I believe we might have had issues with  
25 access to these warehouses because of the lien they

1 asserted and the amounts they were demanding.

2 Q. So in other words, they wouldn't let the  
3 debtor access its collateral stored at the location?

4 A. I believe so.

5 Q. Do you know if that dispute remains  
6 ongoing?

7 A. I don't know if they have allowed access  
8 to the collateral, at this point today. They may  
9 have with the sale to Heller, but I know that there  
10 is an ongoing dispute with them over their lien or  
11 their alleged lien.

12 Q. Do you know if any of the collateral  
13 that was sold are in warehouses that were brokered  
14 by Trangistics?

15 A. To my knowledge, yes.

16 Q. Okay. Do you know if the buyer has been  
17 able to access those machines?

18 A. I don't. I believe they were in  
19 discussions, though.

20 Q. Okay. Fair.

21 So setting aside the company's disputes  
22 with Trangistics, though, in a certain sense, the  
23 services they provide, you think that that was  
24 necessary to preserve the collateral that was sold?

25 A. Yes.

1 Q. And Trangistics charged the debtor for  
2 those services in the amount of approximately 38,600  
3 a month, correct?

4 A. That's my understanding.

5 Q. Do you think that those charges were  
6 necessary to preserve the collateral for the sale  
7 process?

8 A. I believe the alternative may have been  
9 abandoning them, if we were not able to access them.

10 Q. Do you think Enigma benefited from those  
11 fees being charged by Trangistics?

12 A. I believe that the cost of preserving  
13 the collateral allowed the sale, which was approved.

14 Q. Do you think Enigma benefited from that?

15 MR. MANN: Objection. Form.

16 THE WITNESS: I understand that Enigma  
17 didn't object to the sale.

18 BY MR. KISSNER:

19 Q. But do you think that Enigma benefited  
20 from the sale?

21 MR. MANN: Objection to form.

22 THE WITNESS: Yes.

23 BY MR. KISSNER:

24 Q. How did it benefit?

25 A. I believe --

1 MR. MANN: Objection to form.

2 THE WITNESS: I believe that Enigma  
3 benefited because the sale was approved and they  
4 will receive net proceeds for the collateral they  
5 encumbered.

6 BY MR. KISSNER:

7 Q. Okay. Do you think that Enigma  
8 benefited from the fees charged by Trangistics to  
9 the estate?

10 MR. MANN: Objection to form.

11 THE WITNESS: Yes.

12 BY MR. KISSNER:

13 Q. Okay.

14 A. To the extent -- well, not just "yes."

15 Q. That's fine. I can try another way.

16 When you prepared your surcharge  
17 analysis, was one of the things that you analyzed  
18 whether Enigma benefited from the charges included  
19 therein?

20 A. Yes. I believe it's implied in the  
21 approval of the sale, but also that the sale will  
22 provide proceeds to Enigma.

23 Q. Right. I guess I might be asking  
24 something a little different, which was, presumably,  
25 when you prepared the surcharge analysis there were

1 certain things that you analyzed and considered,  
2 correct?

3 A. Yes.

4 Q. Was one of the things that you  
5 considered in preparing the surcharge analysis  
6 whether the various secured lenders benefited from  
7 the costs included in the surcharge analysis?

8 MR. MANN: Objection to form.

9 THE WITNESS: Yes.

10 BY MR. KISSNER:

11 Q. Okay. Did you analyze whether  
12 Trangistics' fees benefited secured lenders?

13 MR. MANN: Objection to form.

14 THE WITNESS: I'm not sure I understand  
15 your question. Can you rephrase it, please?

16 BY MR. KISSNER:

17 Q. Sure. So you said that you analyzed  
18 certain items or issues or concepts when preparing  
19 your surcharge analysis, correct?

20 A. Yes.

21 Q. And you said that one of those things  
22 that you analyzed was whether a given cost provided  
23 a benefit to the debtor's secured lenders, correct?

24 A. Yes.

25 Q. And the debtor's secured lenders, that

1 includes Enigma?

2 A. Yes.

3 Q. Okay. So was one of the things that you  
4 analyzed, when preparing the surcharge analysis,  
5 whether Enigma benefited from the costs included in  
6 the analysis?

7 A. I believe that, at least ratably, Enigma  
8 benefited, as the sale will provide proceeds greater  
9 than the cost of the storage.

10 Q. Right. But you're saying that here  
11 today in this deposition.

12 I guess what I'm asking is did you  
13 analyze that at the time that you prepared the  
14 surcharge analysis?

15 MR. MANN: Objection to form.

16 THE WITNESS: I'm not sure I understand  
17 the difference. Is your question whether or not it  
18 was considered then?

19 BY MR. KISSNER:

20 Q. Yeah.

21 A. I believe that, just based on these  
22 costs being less than the surcharge or than the net  
23 proceeds, yes.

24 Q. Right. I guess --

25 A. If there was a negative number, then it

1 would be very obvious.

2 Q. Well, to be clear, I'm not asking you to  
3 describe that benefit or sort of justify anything  
4 here today. I guess I'm just trying to get at the  
5 process that was employed in preparing the surcharge  
6 analysis.

7 So all I want to know is did you  
8 consider whether Enigma benefited from the costs  
9 included in the surcharge analysis, at the time that  
10 you were preparing the surcharge analysis?

11 A. Yes, I considered it in my conversations  
12 with counsel and Province.

13 Q. Okay. Great.

14 And did you consider whether Enigma  
15 benefited from the fees charged by Trangistics?

16 MR. MANN: Objection to form.

17 THE WITNESS: Sorry, can you repeat your  
18 question.

19 BY MR. KISSNER:

20 Q. Sure. So you said, before, that at the  
21 time that you were preparing your surcharge  
22 analysis, you considered whether the costs in that  
23 analysis benefited Enigma, right?

24 A. Yes.

25 Q. Okay. So as part of that, did you

1 consider whether the costs proposed to be charged by  
2 Trangistics benefited Enigma?

3 MR. MANN: Objection to form.

4 THE WITNESS: Yes.

5 BY MR. KISSNER:

6 Q. Do you think that Enigma benefited?

7 A. Yes.

8 MR. MANN: Objection to form.

9 BY MR. KISSNER:

10 Q. And how did Enigma benefit?

11 MR. MANN: Objection to form.

12 THE WITNESS: A sale that Enigma  
13 approved was ordered by the court.

14 BY MR. KISSNER:

15 Q. And can you quantify the amount by which  
16 Enigma benefited --

17 MR. MANN: Objection to form.

18 BY MR. KISSNER:

19 Q. -- from Trangistics' fees?

20 A. Not sitting here right in front of you.

21 Q. Did you ever attempt to quantify the  
22 amount by which Enigma benefited from Trangistics'  
23 fees?

24 MR. MANN: Objection to form.

25 THE WITNESS: Can you be more specific



1 in what you mean?

2 BY MR. KISSNER:

3 Q. Sure. I asked you whether you could  
4 quantify the benefit that Enigma received from  
5 Trangistics' fees, and you said, "sitting here right  
6 now, I can't," correct?

7 A. Yes. Without a calculator or Excel  
8 open, yeah.

9 Q. So I guess what I want to know is have  
10 you, at any point, ever attempted to perform that  
11 analysis, with a calculator or Excel or otherwise?

12 A. Through conversations. I don't believe  
13 there's an official or draft document of those  
14 benefits.

15 Q. Okay. But just to be clear -- and I'm  
16 not trying to be difficult, I just want to make sure  
17 the record's clear and that I have my story  
18 straight -- you don't recall ever endeavoring to  
19 quantify the benefit that Enigma received from  
20 Trangistics' warehouse fees, correct?

21 A. I don't remember creating any  
22 analysis -- tangible analysis that did that.

23 Q. Did you ever create an intangible  
24 analysis?

25 A. We certainly discussed this surcharge

1 with counsel and Province.

2 Q. Okay. So, before, you referenced a  
3 dispute between Trangistics and the debtor, correct?

4 A. Correct.

5 Q. Do you have a sense of what that dispute  
6 was about, just in broad strokes?

7 A. I'd have to defer to the lawyers on the  
8 details of it, but my understanding is that it's  
9 over Trangistics' pre-petition secured claim that  
10 they filed.

11 Q. Are you aware of any other dispute  
12 between the company and Trangistics?

13 A. I believe, at one point, I had  
14 conversations with the former CEO about the rate  
15 that they had charged, but in our discussions with  
16 them and review of the Deployment Logix invoices, it  
17 didn't appear to be out of market.

18 Q. Could you turn to page 24 of the  
19 transcript in front of you that was marked as  
20 Exhibit 14. And could you go right about the middle  
21 of the page at line 15.

22 A. Yes.

23 Q. Where it says "Ms. McPherson"?

24 A. Yes.

25 Q. And Ms. McPherson, that's still debtor's

1 counsel, correct?

2 A. Yes.

3 Q. And could you turn to page 25 at the  
4 bottom, line 21.

5 A. Yes.

6 Q. And could you read that first sentence?

7 A. "So that -- our position is this is not  
8 an actual and necessary expense, and they have to  
9 bear the burden of establishing that it is."

10 Q. And "this," you understand that to refer  
11 to amounts invoiced by Trangistics to the debtor,  
12 correct?

13 A. Without reading the rest of the  
14 document, that appears to be what they're talking  
15 about.

16 Q. Do you agree with Ms. McPherson that the  
17 Trangistics charges were not an actual and necessary  
18 expense?

19 MR. MANN: Object to the form.

20 THE WITNESS: I'm not sure that I  
21 understand the full context of that statement that  
22 she's making.

23 BY MR. KISSNER:

24 Q. Okay. Sure. So we could go back to  
25 page 22 of the transcript. It's on line 8. It

1 says, "We understand that, as here, Trangistics is  
2 saying, well, we sent you invoices for 38,600,"  
3 right?

4 A. Yes.

5 Q. And then on line 14, Ms. McPherson says,  
6 "And it's our understanding that the warehouse  
7 actually charges significantly less, 30,500,"  
8 correct?

9 A. Yes.

10 Q. So does that refresh your recollection  
11 as to whether there were any other disputes  
12 regarding Trangistics' claims, other than its  
13 pre-petition warehouse liens?

14 A. Yeah, based on this, yes.

15 Q. And what's that -- what's your  
16 understanding?

17 A. Is that the warehouse actually charges  
18 significantly less, of 30,500, relative to the  
19 38,600.

20 Q. So the -- to make sure I have that  
21 right, so what this is alleging is that the actual  
22 warehouses -- that the actual warehouse charges  
23 Trangistics 30,500, Trangistics charges the estate  
24 38,600, and there's a dispute about that, fair?

25 A. Yes.

1 Q. And if we turn back then to page 25 of  
2 the transcript, and on line 21, does that refresh  
3 your recollection as to why Ms. McPherson might have  
4 said that the Trangistics claim was not an actual  
5 and necessary expense?

6 MR. MANN: Objection to form.

7 THE WITNESS: It looks like there was a  
8 dispute about this, contingent on them proving that  
9 they were actual and necessary expenses.

10 BY MR. KISSNER:

11 Q. Okay. And so if Trangistics charges the  
12 estate \$38,600 a month for a storage space that only  
13 costs \$30,500 a month, do you think that's an actual  
14 and necessary expense?

15 MR. MANN: Objection to form.

16 THE WITNESS: I don't know that I can  
17 opine on the margins that warehouse owners charge  
18 their brokers.

19 BY MR. KISSNER:

20 Q. Okay. But if Trangistics was charging  
21 the debtor more for the storage than what it was  
22 actually worth, that wouldn't be necessary, right?

23 MR. MANN: Objection to form.

24 THE WITNESS: Coin Cloud is not a  
25 warehouse broker so I don't know that that cost

1 wouldn't have been necessary, especially relative to  
2 the Deployment Logix invoices.

3 BY MR. KISSNER:

4 Q. Okay. But if Trangistics was charging  
5 the debtor more for storage than what it was  
6 actually worth, that wouldn't be reasonable, right?

7 MR. MANN: Objection to form.

8 THE WITNESS: I think you would have to  
9 consider the circumstances of that situation fully,  
10 but in the vacuum of what you just said, sure.

11 BY MR. KISSNER:

12 Q. Fair.

13 I'm going to do one brief set and then  
14 we'll break in five to ten, if that's all right.

15 A. Sure.

16 Q. Okay. Could we turn back to Tab 3,  
17 which was marked as Exhibit 2. If you could go to  
18 page 4 of your declaration.

19 A. Okay.

20 Q. I'm sorry it's not highlighted, but if  
21 you go to paragraph 9, down to line 7 of this  
22 declaration, and could you just read that sentence  
23 there.

24 A. "First, I am informed based on e-mail  
25 communications with a representative of Stretto,

1 Inc. that the debtor's claims, noticing, and  
2 solicitation, Stretto, Inc. incurred approximately  
3 27,500 in expenses associated with noticing and  
4 servicing all sale-related documents."

5 Q. Okay. So does that mean then that  
6 Stretto, Inc.'s fees, or at least certain of them  
7 were included in your surcharge analysis?

8 A. Yes, specifically as it relates to  
9 noticing the sale.

10 Q. And who's Stretto, Inc.?

11 A. Stretto is the claims and noticing agent  
12 on this bankruptcy.

13 Q. Okay. And who retained them?

14 A. I'd have to defer to legal on their  
15 employment agreement, but I believe the debtor.

16 Q. Okay. And so this says that Stretto  
17 incurred \$27,500 in sale and noticing-related  
18 expenses?

19 A. Yes.

20 Q. Okay. Do you think that those fees were  
21 necessary to the sale process?

22 MR. MANN: Objection to form.

23 THE WITNESS: I think I would have to  
24 defer to counsel on the noticing process. I'm  
25 certainly not an expert on that.

1 BY MR. KISSNER:

2 Q. How did you determine that Stretto  
3 incurred approximately \$27,500 in expenses  
4 associated with noticing and servicing all  
5 sale-related documents?

6 A. I relied on the information they gave me  
7 when I asked for it.

8 Q. Okay. So why don't we go to Tab 26,  
9 which I'd ask be marked as Exhibit 15.

10 (Exhibit 15 marked.)

11 BY MR. KISSNER:

12 Q. And do you recognize this document?

13 A. Yes.

14 Q. Can you tell me what it is?

15 A. This is an e-mail exchange between  
16 myself and Angela Tsai.

17 Q. Who is Angela Tsai?

18 A. Director of corporate restructuring at  
19 Stretto.

20 Q. And can you describe what this e-mail is  
21 about?

22 A. Yes. It's me asking Angela to let me  
23 know what the costs and expenses have been, through  
24 Stretto, associated with the noticing -- noticing  
25 the sale process.



1 Q. Is this the e-mail that you relied upon  
2 in determining that approximately \$27,500 of Stretto  
3 fees were incurred in the sale and noticing-related  
4 expenses?

5 A. Yes.

6 Q. Did you review any invoices from  
7 Stretto?

8 A. No.

9 Q. When you were preparing the surcharge  
10 analysis, you said before that one of the things you  
11 analyzed was whether the secured lenders benefited  
12 from various costs included in the analysis,  
13 correct?

14 A. Yes.

15 Q. Okay. And included among those secured  
16 lenders was Enigma, correct?

17 A. Yes.

18 Q. Did you analyze whether Enigma benefited  
19 from the fees and expenses incurred by Stretto?

20 MR. MANN: Objection to form.

21 THE WITNESS: Yes.

22 BY MR. KISSNER:

23 Q. And what was the result of that  
24 analysis? What did you conclude?

25 A. That the sale was successful and

1 approved.

2 Q. Sure. But did you conclude, one way or  
3 another, whether Enigma benefited from Stretto's  
4 fees and expenses?

5 MR. MANN: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. KISSNER:

8 Q. And what was that -- what was your  
9 conclusion?

10 MR. MANN: Objection to form.

11 THE WITNESS: That they benefited from  
12 the sale being approved.

13 BY MR. KISSNER:

14 Q. But did they benefit from Stretto's fees  
15 and expenses?

16 MR. MANN: Objection to form.

17 THE WITNESS: If they were necessary to  
18 the approval of the sale, yes.

19 BY MR. KISSNER:

20 Q. Did you ever attempt to quantify the  
21 amount by which Enigma benefited from Stretto's fees  
22 and expenses?

23 MR. MANN: Objection to form.

24 THE WITNESS: I believe I already  
25 answered this question.

1 BY MR. KISSNER:

2 Q. Well, before, we were talking about  
3 Trangistics, now we're talking about Stretto, so.

4 Did you ever attempt to quantify the  
5 amount by which Enigma benefited from Stretto's fees  
6 and expenses?

7 MR. MANN: Objection to form.

8 THE WITNESS: I don't believe there was  
9 a formal analysis done, other than those that we've  
10 discussed and maybe drafts of those.

11 BY MR. KISSNER:

12 Q. Now, do you recall, did Enigma ever  
13 direct the debtor to retain Stretto?

14 A. I don't believe Enigma objected to it,  
15 but I do not know if Enigma instructed the debtor  
16 to.

17 Q. Do you recall if Enigma ever instructed  
18 the debtor -- strike that.

19 Do you recall if Enigma ever directed  
20 the debtor to incur the \$27,500 of costs from  
21 Stretto?

22 A. I don't know if the debtor was ever  
23 directed by Enigma to do that, no.

24 Q. And do you think that Stretto's fees  
25 were reasonable?

1 MR. MANN: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. KISSNER:

4 Q. Why is that?

5 A. I don't believe I've seen any objections  
6 to these fees, and they seem in line with what I've  
7 seen in other noticing instances.

8 Q. What have you seen in other noticing  
9 instances?

10 A. Costs generally, you know, based on the  
11 creditor matrix, which I believe in this case --  
12 counsel would have to correct me on the numbers --  
13 possibly exceeding 10,000 noticing parties.

14 Q. Okay. And so you've given me some  
15 reasons right now why you think these fees were  
16 reasonable. Did you ever analyze whether these fees  
17 were reasonable in preparing your surcharge  
18 analysis?

19 A. Yes.

20 Q. Okay. And what was your conclusion?

21 A. That they were reasonable.

22 Q. Okay.

23 MR. KISSNER: I think we can go off the  
24 record, take a break for lunch.

25 (A discussion is held off the record.)

1 MR. KISSNER: Back on the record.

2 Just a few things to get out of the way.

3 So first, I understand that counsel for AV Tech is  
4 going to ask a couple of questions, so we'll turn  
5 the floor over to him in a second.

6 But one thing I was discussing with  
7 Mr. James' counsel is stipulations regarding  
8 objections. Just so that it's on the record, we  
9 agree that all objections, other than to the form of  
10 the question, are not waived and are preserved.

11 And I think, with that, I can turn it  
12 over to Mr. Higgins.

13 MR. HIGGINS: Thank you.

14 EXAMINATION

15 BY MR. HIGGINS:

16 Q. Good afternoon. Can you hear me?

17 A. Yes.

18 Q. Awesome. So I have about four questions  
19 for you here. Hopefully, I'll try and make this  
20 pretty smooth.

21 So I want to turn you back to what is  
22 marked as Tab 3, I believe, in your binder. That is  
23 your declaration supporting the surcharge motion.

24 A. Sure.

25 Q. So as I read this, I understand that you

1 have broken out what you call storage costs and sale  
2 costs; is that accurate?

3 A. Sorry, let me get to the exhibit. Is  
4 that what you're referring to?

5 Q. Yes, for your analysis.

6 A. And you said broken out storage costs  
7 and sale-related costs; is that right?

8 Q. That's correct, yes.

9 A. Yes, those are the two primary  
10 categories.

11 Q. And now I'm looking at the pages --  
12 page 9. It's part of, I believe, Exhibit A to your  
13 declaration and -- I'm sorry, go ahead.

14 A. Yeah. I think I'm on the same page as  
15 you.

16 Q. Perfect.

17 And we can agree that those storage  
18 costs, the warehouse costs include costs from  
19 Deployment Logix, Morningstar Storage and  
20 Trangistics, right?

21 A. Yes.

22 Q. And those sale-related costs include  
23 costs from Province and Stretto and then others  
24 employed by the estate as well?

25 A. Yes.

1 Q. Okay. In your analysis, did you attempt  
2 to quantify the precise benefits that any of those  
3 entities conferred upon AVT specifically?

4 A. Can you clarify what you mean?

5 Q. Sure. So during your analysis, did you  
6 attempt to quantify -- we'll use Stretto as an  
7 example here -- the precise dollar amount that  
8 Stretto's involvement in this case conferred upon  
9 AVT as a benefit?

10 A. There's no formal document or analysis  
11 to show, but the approval of the sale provides --

12 Q. Understood. I'm sorry I cut you off. I  
13 apologize.

14 A. That's okay.

15 -- provides the benefit.

16 Q. Okay, so your analysis then is that  
17 AV Tech's share of -- I believe you're talking  
18 accelerated costs now, so that the total DCMs,  
19 right, under your analysis, its share of the costs  
20 should be the same portion?

21 A. As the others, the other lenders  
22 relative to the number of total kiosks sold.

23 Q. Okay. Let's talk about the auction,  
24 then.

25 Can I assume that you were involved in

1 the auction that was held on June 2nd?

2 MR. MANN: Objection. I think the  
3 auction is going to be for Dan Moses tomorrow, what  
4 went on with the auction.

5 MR. HIGGINS: I'm sorry, I couldn't hear  
6 most of that.

7 MR. MANN: So we have Dan Moses tomorrow  
8 and he's appearing to answer the questions regarding  
9 the auction and what went on with the auction.

10 MR. HIGGINS: Understood.

11 I suppose I'm looking to ask questions  
12 about what I believe is topic one, the sale and  
13 marketing process. Would you allow that or is that  
14 going to be still, in your opinion, off limits?

15 THE WITNESS: That's a topic for Dan.

16 MR. HIGGINS: Oh, okay. Well, with that  
17 then, that's all I had to ask. Thank you.

18 MR. KISSNER: All right. Great. Are we  
19 good to proceed then?

20 EXAMINATION

21 BY MR. KISSNER:

22 Q. And so before I get going, just wanted  
23 to ask, during the lunch break, did you talk to  
24 anybody else about the substance of your testimony  
25 today?



1 A. Only counsel.

2 Q. Only counsel?

3 What did you guys talk about? Without  
4 revealing anything privileged.

5 A. Where he's from -- it's the first time  
6 I've met him -- and just general demeanor during the  
7 deposition.

8 Q. Okay.

9 A. Oh, also, yeah -- also it was brought to  
10 my attention that there are potentially 27,000  
11 noticing parties as it relates to Stretto's sale and  
12 noticing costs.

13 Q. Understood. Thank you.

14 All right. So let's turn back to your  
15 surcharge declaration which was Tab 3 we marked as  
16 Exhibit 2. And then we're going to go back to  
17 page 4 of your declaration, to paragraph 9.

18 A. Okay.

19 Q. So the -- you testified earlier that the  
20 debtor's -- or strike that.

21 You testified earlier that the surcharge  
22 analysis includes professional fees, correct?

23 A. Yes.

24 Q. Does it include Fox Rothschild's fees?

25 A. Yes.

1 Q. And about how many -- about how much in  
2 fees from Fox Rothschild are included in the  
3 surcharge analysis?

4 A. I don't remember the exact number off  
5 the top of my head.

6 Q. Could you read line 19 of page 4 of your  
7 surcharge declaration --

8 A. Yes.

9 Q. -- beginning with the word "fifth"?

10 A. "I am informed based on a review of  
11 monthly fee statements, docket number 436, 575, 721,  
12 and 864, filed by counsel to the debtor, Fox  
13 Rothschild, that Fox Rothschild incurred  
14 approximately 406,000 in fees and expenses  
15 associated with the sale process."

16 Q. Okay. Does that refresh your  
17 recollection of how much of Fox Rothschild's fees  
18 are included in the surcharge analysis?

19 A. Yes.

20 Q. And how much?

21 A. 406,857.

22 Q. And those fees, they all related to the  
23 sale process, correct?

24 A. To my understanding, yes.

25 Q. How did -- how did you determine that?

1           A.           Based on the category and the fee  
2           statements and confirmation from counsel.

3           Q.           Okay. Do you think that Enigma  
4           benefited from those fees?

5                       MR. MANN: Objection. Form.

6                       THE WITNESS: Yes.

7       BY MR. KISSNER:

8           Q.           Why?

9           A.           Fox counsel to the debtor assisted in  
10          the sale process that was ultimately approved.

11          Q.          And when you were preparing the  
12          surcharge analysis, did you undertake an analysis of  
13          whether Enigma benefited from Fox Rothschild's fees  
14          incurred in connection with the sale process?

15                      MR. MANN: Objection. Form.

16                      THE WITNESS: Yes.

17       BY MR. KISSNER:

18          Q.          And what was your conclusion?

19          A.          That the sale was approved and the  
20          lenders will receive proceeds from the sale and that  
21          those fees were necessary to doing so.

22          Q.          Sitting here today, can you quantify the  
23          amount by which Enigma benefited from Fox  
24          Rothschild's fees incurred in connection with the  
25          sale process?

1 MR. MANN: Objection. Form.

2 THE WITNESS: At least the amount of the  
3 net proceeds.

4 BY MR. KISSNER:

5 Q. Did you attempt to quantify the amount  
6 by which Enigma benefited in connection with  
7 preparing the surcharge analysis?

8 MR. MANN: Objection. Form.

9 THE WITNESS: Sorry, can you clarify it.  
10 I don't understand the difference between this  
11 question and the last.

12 BY MR. KISSNER:

13 Q. Sure. So I was saying, sitting here  
14 today, were you able to quantify the amount by which  
15 Enigma benefited from certain fees, and you gave an  
16 answer.

17 So what I'm trying to understand is if  
18 you also attempted to quantify Enigma's benefit at  
19 the time you were preparing your analysis?

20 MR. MANN: Objection. Form.

21 THE WITNESS: Yes.

22 BY MR. KISSNER:

23 Q. Okay. And what was your conclusion?

24 A. That Enigma's benefiting at least as  
25 much as the net proceeds.

1 Q. Okay. Did -- sorry. Strike that.

2 To your knowledge, did Enigma ever  
3 direct the debtor to retain Fox Rothschild?

4 A. I don't know that Enigma directed them,  
5 but I don't believe they objected to the retention  
6 or Fox Rothschild's fees, at least at the time of  
7 this analysis, excluding those that did not have  
8 certificate of no objection at the time.

9 Q. Well, then, let's talk a little bit  
10 about that retention.

11 Let's turn to Tab 15, which I'd ask the  
12 reporter to mark as, I believe, Exhibit 16.

13 (Exhibit 16 marked.)

14 BY MR. KISSNER:

15 Q. Are you there?

16 A. Tab 15?

17 Q. Yeah.

18 A. Yes.

19 Q. What is this document -- sorry. Strike  
20 that.

21 Are you familiar with this document?

22 A. I have at least seen it, yes.

23 Q. Can you describe what it is?

24 A. The final order authorizing retention  
25 and employment of Fox Rothschild, LLP as debtor's

1 counsel effective as of the petition date.

2 Q. This is the order approving Fox  
3 Rothschild's employment by Coin Cloud?

4 A. It appears so.

5 Q. Can you turn to page 3. And do you see  
6 paragraph 2 at the top?

7 A. Yes.

8 Q. Could you please read it out loud.

9 A. Sure. "Pursuant to 11 USC 328, Fox  
10 Rothschild shall have a \$450,000 cap on its  
11 compensation for services rendered in connection  
12 with the debtor's first day pleadings, attendance at  
13 341 meeting of creditors, and any asset sale  
14 process."

15 Q. Okay. Perfect.

16 So would it be fair to say then that Fox  
17 Rothschild's fees in this case were capped at  
18 \$450,000 in total for first day pleadings,  
19 attendance at the creditors' meeting, asset sales,  
20 lease rejection and financing motions?

21 MR. MANN: Objection to form.

22 THE WITNESS: I believe that's a  
23 question for counsel.

24 BY MR. KISSNER:

25 Q. Okay. But --

1 MR. KISSNER: Can you read back his  
2 prior answer, please, into the record?

3 THE REPORTER: He read the record.

4 MR. KISSNER: Okay.

5 BY MR. KISSNER:

6 Q. So would you agree, at least, that this  
7 order says that there's a \$450,000 cap on services  
8 rendered in connection with first day pleadings,  
9 attendance at creditors' meeting, asset sales, lease  
10 rejection and financing motions?

11 A. I believe that this -- context of the  
12 rest of the document, and maybe other filings that  
13 I'm unaware of, that this says, "Fox Rothschild  
14 shall have a \$450,000 cap on its compensation for  
15 services rendered in connection with the debtor's  
16 first day pleadings, attendance at 341 meeting of  
17 creditors, and any asset sale process, lease  
18 rejection and financing motions."

19 Q. Okay. Could you turn to Tab 35 in your  
20 binder, which I'd ask the court reporter to mark as  
21 Exhibit 17. And let me know when you're there.

22 (Exhibit 17 marked.)

23 THE WITNESS: I'm there.

24 BY MR. KISSNER:

25 Q. Do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. This is Fox Rothschild, LLP's monthly  
4 fee statement of services rendered and expenses  
5 incurred for the period from February 7, 2023,  
6 through March 31st, 2023.

7 Q. And could we go to Tab 36 in your  
8 binder, which I'd ask the court reporter to mark as  
9 Exhibit 18.

10 (Exhibit 18 marked.)

11 BY MR. KISSNER:

12 Q. Do you recognize this document?

13 A. Yes. I'm not sure that I reviewed it  
14 but I recognize what it is, yes.

15 Q. Could you tell me what it is?

16 A. Fox Rothschild, LLP's monthly fee  
17 statement of services rendered and expenses incurred  
18 for the period from June 1st, 2023, through  
19 June 30th, 2023.

20 Q. Okay. Let's go back to Tab 35, which  
21 was Exhibit 17, then.

22 You said this was -- or appears to be  
23 Fox Rothschild's fee statement for March and then  
24 the stub period of February, correct?

25 A. Yes.



1 Q. And could we go to page 6. I thought  
2 they were Bate stamps on these. I apologize.

3 But it's Exhibit B, task code summary.  
4 Do you see that?

5 A. Yes.

6 Q. And if you go down a few lines, do you  
7 see where it says "cash collateral/DIP financing"?

8 A. Yes.

9 Q. And if you go over, do you see a dollar  
10 amount there?

11 A. Yes.

12 Q. Can you read to me what that is?

13 A. \$101,938.50.

14 Q. Do you understand that to mean that Fox  
15 Rothschild incurred \$101,938.50 in connection with  
16 cash collateral and DIP financing during February  
17 and March 2023?

18 A. Yes.

19 Q. And if we could go down a couple more  
20 lines to lease/executory contract issues, do you see  
21 that?

22 A. Yes.

23 Q. If you go over to the dollar amount  
24 listed and read that for me, please.

25 A. \$128,373.

1 Q. Okay. So do you understand this to mean  
2 that Fox Rothschild incurred \$128,373 in connection  
3 with lease and executory contract issues during  
4 February and March 2023?

5 A. Yes.

6 Q. Okay. And then could you go down closer  
7 to the bottom to where it says "use, sale or lease  
8 of property"?

9 A. Yes.

10 Q. And if you see a dollar amount listed  
11 there, could you read that to me?

12 A. \$41,871.50.

13 Q. And do you understand that to mean that  
14 Fox Rothschild incurred \$41,000 -- sorry. Strike  
15 that.

16 Do you understand that to mean that Fox  
17 Rothschild incurred \$41,871.50 in connection with  
18 the use, sale or lease of property in the months of  
19 February and March of 2023?

20 MR. MANN: Objection. Form.

21 THE WITNESS: Yes.

22 BY MR. KISSNER:

23 Q. Do you have any sense of what those  
24 dollar amounts add up to?

25 A. Not without doing the math.

1 Q. Okay. If I told you they added up to  
2 about \$272,000, would that sound right?

3 A. Roughly, yes.

4 Q. And if we could go to Tab 36, which was  
5 marked as Exhibit 18 -- and this one also doesn't  
6 have a Bate stamp, so I apologize -- but you said  
7 that this appeared to be Fox Rothschild's invoice  
8 for the period of June 2023, correct?

9 A. Yes.

10 Q. Could you then turn to page 6 of this,  
11 which is Exhibit B, task code summary.

12 A. Okay.

13 Q. And if you could go down a few lines to  
14 where it says "cash collateral/DIP financing."

15 A. Yes.

16 Q. Do you see a dollar amount there?

17 A. \$5,989.

18 Q. And do you understand this to mean that  
19 Fox Rothschild incurred \$5,989 of fees in connection  
20 with cash collateral and DIP financing issues during  
21 June 2023?

22 A. That makes sense.

23 Q. And can you go down a bit to  
24 lease/executory contract issues. Do you see that?

25 A. Yes.

1 Q. And could you read the dollar amount  
2 there?

3 A. \$51,326.50.

4 Q. And do you understand this to mean that  
5 Fox Rothschild incurred \$51,326.50 in connection  
6 with lease and executory contract issues during the  
7 month of June 2023?

8 A. That makes sense.

9 Q. Okay. And one more.  
10 Could you go down, second-to-last line  
11 where it says "use, sale or lease of property." Do  
12 you see that?

13 A. Yes.

14 Q. And could you read the dollar amount  
15 listed there?

16 A. \$187,750.50.

17 Q. Do you understand that to mean that Fox  
18 Rothschild incurred \$187,750.50 in fees in  
19 connection with use, sale or lease of property  
20 during June 2023?

21 A. That makes sense.

22 Q. Okay. And would you happen to know what  
23 these dollar amounts add up to?

24 A. Not without doing the math.

25 Q. If I told you that they added up to

1 approximately \$245,000, would that sound more or  
2 less right?

3 A. I'll take your word for it.

4 Q. Okay. And, before, we said, for Tab 35,  
5 those dollar amounts added up to roughly \$272,000,  
6 right?

7 A. That sounds right.

8 Q. Okay. And 245,000 plus 272,000, do you  
9 know how much that is?

10 A. Not without doing the math.

11 Q. Do you think it's more or less than  
12 \$450,000?

13 A. I'd prefer not to guess.

14 Q. Okay. If I were to tell you that those  
15 two numbers added up to \$517,000, would that sound  
16 right?

17 A. I'd take your word for it.

18 Q. Is \$517,000 more or less than \$450,000?

19 A. More.

20 Q. Would it be fair -- sorry. Strike that.

21 Do you know if Fox Rothschild incurred  
22 any fees relating to the sale other than those  
23 reflected in the invoices marked as Exhibits 17 and  
24 18?

25 A. I believe so, but I would have to check

1 with them; otherwise, I'd be guessing. But I  
2 believe there were, yes.

3 Q. Okay. Would you agree that all of the  
4 categories of fees that we've just been walking  
5 through, use, sale or lease of property, executory  
6 contract issues, DIP financing, that those are all  
7 listed in Fox Rothschild's retention order as being  
8 subject to a cap?

9 MR. MANN: Objection. Form.

10 THE WITNESS: I'd have to defer to  
11 counsel, but it makes sense.

12 BY MR. KISSNER:

13 Q. So I guess my only question is do you  
14 think it would be reasonable to surcharge Enigma for  
15 fees that were incurred in excess of a  
16 court-mandated cap?

17 MR. MANN: Objection. Form.

18 THE WITNESS: I don't know that I can  
19 opine on the legality of what Fox Rothschild is  
20 charging. I'd have to rely on them for that  
21 opinion.

22 BY MR. KISSNER:

23 Q. Okay. Let's go back to your  
24 declaration, which is Tab 2 -- or sorry -- Tab 3,  
25 Exhibit 2. And once you're there, we can go to the

1 same place that we have been, which is page 4,  
2 paragraph 9.

3 A. Okay.

4 Q. Sorry. Before we do that, just one  
5 other question about Fox Rothschild.

6 Who do they represent in the case?

7 A. The debtor.

8 Q. They represent the debtor, okay.

9 So your surcharge analysis, we discussed  
10 how it includes certain professional fees, right?

11 A. Correct.

12 Q. And those professional fees include some  
13 fees for Seward & Kissel, correct?

14 A. I believe so, yes.

15 Q. Do you know what Seward & Kissel is?

16 A. Counsel to the committee of unsecured  
17 creditors.

18 Q. They're a law firm?

19 A. Yes.

20 Q. And --

21 A. To my knowledge, yes.

22 Q. And so your surcharge analysis, it  
23 includes fees for Seward & Kissel, right?

24 A. Correct.

25 Q. And how much of their fees was included

1 in the surcharge analysis?

2 A. It says here approximately \$248,000 --  
3 sorry -- \$248,015 in fees and expenses associated  
4 with the sale.

5 Q. And how did you determine -- sorry.  
6 Strike that.

7 How did you determine whether these fees  
8 were associated with the sale?

9 A. I relied on a representative from Seward  
10 & Kissel to indicate those fees to me.

11 Q. Okay. Why don't we move over to Tab 28,  
12 then, which we'll mark as Exhibit 19.

13 (Exhibit 19 marked.)

14 BY MR. KISSNER:

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. This is an e-mail chain between a  
19 representative of Seward & Kissel, myself and  
20 several other estate professionals.

21 Q. And this e-mail, it contains an estimate  
22 of Seward & Kissel's fees associated with the sales  
23 process?

24 A. Yes. It says here, "S&K's estimated  
25 fees related to the sale process are \$248,015 for



1 the case."

2 Q. Okay. And before, when you said that in  
3 making your determination that certain fees were  
4 associated with the sale process, you said that you  
5 relied on an estimate. Is this the estimate to  
6 which you were referring before?

7 A. Yes, I believe so.

8 Q. Okay. Did you review anything else to  
9 make the determination of what these fees related  
10 to?

11 A. I don't believe so for this particular  
12 instance.

13 Q. Did you review any invoices of Seward &  
14 Kissel?

15 A. I don't believe so for this particular  
16 instance.

17 Q. Did you ever analyze whether Enigma  
18 benefited from the fees incurred by Seward & Kissel?

19 A. Yes.

20 Q. And what was the conclusion that you  
21 reached?

22 A. That Enigma benefited from the sale, at  
23 least in the amount of the net proceeds, which were  
24 only achievable with the fees that had been  
25 incurred.

1 Q. So you said before that Seward & Kissel  
2 is counsel to the creditors' committee, right?

3 A. Yes.

4 Q. What role did Seward & Kissel play in  
5 selling the debtor's assets? Sorry -- strike that.

6 Did Seward & Kissel play a role in  
7 selling the debtor's assets?

8 MR. MANN: Objection. Since that's  
9 relating to more of like the sale of it, that would  
10 be a question to Dan Moses.

11 MR. KISSNER: Yeah, but I think we're  
12 just trying to establish the inputs for the  
13 surcharge analysis. I'm not going to -- you can  
14 have -- this isn't going to be a side show about the  
15 sale, because we have seven hours on that tomorrow.  
16 I'm just trying to get at the process for billing  
17 out the surcharge analysis, so.

18 Could you read my last question back?

19 (The record is read by the reporter.)

20 THE WITNESS: Can you clarify or specify  
21 what you mean by that?

22 BY MR. KISSNER:

23 Q. Well, sure. So you said that -- you  
24 testified earlier that Enigma received a benefit  
25 from the sale of assets, right?

1 A. Yes.

2 Q. And you said that these fees were -- I  
3 don't know the word you used. Strike that.

4 Is it true that you determined that  
5 these fees were necessary to the sale?

6 A. Yes.

7 Q. Okay. So then what role, to your  
8 knowledge, did Seward & Kissel play in selling the  
9 debtor's assets?

10 MR. MANN: Objection to form.

11 THE WITNESS: The creditors' committee  
12 counsel was, at the very least, a consultation party  
13 to the sale, among other things.

14 BY MR. KISSNER:

15 Q. Okay. And so you analyzed, in preparing  
16 your surcharge analysis, whether Enigma benefited  
17 from Seward & Kissel's fees, correct?

18 A. Yes.

19 MR. MANN: Objection to form.

20 BY MR. KISSNER:

21 Q. And your conclusion was that they did  
22 achieve a benefit?

23 MR. MANN: Objection to form.

24 THE WITNESS: Yes.

25 ///

1 BY MR. KISSNER:

2 Q. Did you attempt to quantify the amount  
3 by which Enigma benefited from Seward & Kissel's  
4 fees?

5 MR. MANN: Objection to form.

6 THE WITNESS: At least the amount of the  
7 net proceeds.

8 BY MR. KISSNER:

9 Q. Did Enigma direct -- to your knowledge,  
10 did Enigma direct the appointment of a creditors'  
11 committee in this case?

12 A. I believe Enigma consented to the  
13 bankruptcy and -- maybe indirectly, but I don't know  
14 that Enigma directly instructed the estate to  
15 appoint a creditors' committee.

16 Q. To your knowledge, did Enigma direct  
17 the -- sorry. Strike that.

18 To your knowledge, is Enigma a member of  
19 the creditors' committee?

20 A. Not to my knowledge.

21 Q. To your knowledge, did Enigma direct the  
22 creditors' committee to retain Seward & Kissel?

23 A. Not to my knowledge, but I don't believe  
24 that Enigma objected to it.

25 Q. Okay. And so you've determined that

1       \$248,015 incurred by Seward & Kissel related to the  
2       sales process, right?

3           A.       Yes.

4           Q.       Do you think that those fees were  
5       reasonable?

6           A.       Yes.

7                   MR. MANN: Objection to form.

8       BY MR. KISSNER:

9           Q.       Why?

10          A.       Their fees were reasonable in that they  
11       played a part in the approval of the sale  
12       ultimately --

13          Q.       Okay.

14          A.       -- among other things.

15          Q.       Sure.

16                   What were some of those other things?

17          A.       To my knowledge, Seward & Kissel, at the  
18       very least, provided feedback of the sale process  
19       along the way. That's my answer.

20          Q.       You said before that your practice area  
21       that you specialize in is corporate restructuring,  
22       right?

23          A.       Yes.

24          Q.       About how many bankruptcies have you  
25       been involved with?

1 A. Around ten.

2 Q. Around ten.

3 Have each of those been in-court  
4 bankruptcies, Chapter 11 or Chapter 7s?

5 A. Yeah. I believe at least most of them  
6 have.

7 Q. Okay. Have you ever been retained in  
8 connection with a Chapter 7 bankruptcy?

9 A. No, not that I remember.

10 Q. But you have been retained in other  
11 Chapter 11 bankruptcies?

12 MR. MANN: Objection. Form.

13 THE WITNESS: I have worked on other  
14 bankruptcies as an employee of Province, yes.

15 BY MR. KISSNER:

16 Q. Fair. That's fair.

17 Do you recall if, in all of those  
18 bankruptcies, a creditors' committee was appointed?

19 A. Yes.

20 Q. Okay. Fair enough.

21 Let's go back to your declaration, which  
22 was Tab 3, Exhibit 2, and we're going to go right  
23 back to that page that we've been on which is  
24 page 4. And we're in paragraph 9, that big  
25 paragraph that takes up the whole page.

1 A. Okay.

2 Q. So your surcharge analysis, it includes  
3 fees incurred by FTI; is that correct?

4 A. Yes.

5 Q. And when I say "FTI," you understand  
6 that I'm referring to FTI Consulting, Inc.?

7 A. Yes.

8 Q. What is "FTI"? Do you know?

9 A. On this case, FTI is the financial  
10 advisor to the committee of unsecured creditors.

11 Q. So FTI was retained by the committee?

12 A. Yes.

13 Q. Not by the debtor?

14 A. Correct.

15 Q. Do you know how much -- sorry. Strike  
16 that.

17 You said that FTI's fees are included in  
18 the surcharge analysis, correct?

19 A. Yes.

20 Q. How much?

21 A. It says here approximately \$142,003.44.

22 Q. Do you have any reason to doubt the  
23 accuracy of that?

24 A. No.

25 Q. And in broad strokes, can you say what

1 the purpose of those fees were, if you can?

2 A. Well, these particular fees were  
3 associated with the sale process.

4 Q. And how did you determine they're  
5 associated with the sale process?

6 A. I'm informed, based on the review of  
7 monthly fee statements -- sorry. I believe I looked  
8 at the wrong area.

9 I'm informed, based on e-mail  
10 communications with a representative of the  
11 financial advisor -- well, of the Official Committee  
12 of Unsecured Creditors.

13 Q. Well, then let's turn to Tab 27 in your  
14 binder, which I'd ask be marked as 20.

15 (Exhibit 20 marked.)

16 BY MR. KISSNER:

17 Q. Let me know when you're there.

18 A. I'm there.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. What is it?

22 A. This is an e-mail from Michael Tucker to  
23 me with Rich Halevy cc'd.

24 Q. Anything else?

25 A. On the -- FTI's sale activity for the



1 50(c)(3) claim, which maybe is a typo.

2 Q. Do you understand that to refer to  
3 surcharge?

4 A. Yes.

5 Q. And you testified that your  
6 determination that \$142,003.44 of FTI fees and  
7 expenses, that that was based off of e-mail  
8 communications with a representative of FTI,  
9 correct?

10 A. Yes, as is shown here.

11 Q. So this Exhibit 20 is the e-mail that  
12 you're referring to?

13 A. Yes.

14 Q. Did you ever analyze any invoices of  
15 FTI?

16 A. No.

17 Q. Do you know if FTI has filed any fee  
18 applications in this case?

19 A. I don't know.

20 Q. And I know you said you didn't review  
21 them, but did FTI send you any invoices while you  
22 were preparing the surcharge analysis?

23 A. At this time of this e-mail, I don't  
24 believe so.

25 Q. Okay. So FTI, it appeared, has incurred

1 about \$142,000 of sale-related fees. Did Enigma  
2 benefit from those fees?

3 MR. MANN: Objection. Form.

4 THE WITNESS: Yes.

5 BY MR. KISSNER:

6 Q. How so?

7 A. Enigma will receive at least the net  
8 proceeds from the sale.

9 Q. And when you were preparing your  
10 surcharge analysis, did you undertake an analysis of  
11 whether Enigma benefited from FTI's fees?

12 MR. MANN: Objection. Form.

13 THE WITNESS: Yes.

14 BY MR. KISSNER:

15 Q. And what was your conclusion?

16 A. That Enigma will benefit at least the  
17 amount of the net proceeds, and likely also  
18 benefited from any accretive value that DC's  
19 resulted in during the sale process.

20 Q. And did you attempt to quantify the  
21 amount by which Enigma benefited from FTI's fees?

22 MR. MANN: Objection. Form.

23 THE WITNESS: There was no formal  
24 analysis tangible to review.

25 ///

1 BY MR. KISSNER:

2 Q. And you didn't conduct your own?

3 A. I conducted my own review through  
4 conversations with counsel.

5 Q. Counsel to the debtor?

6 A. Yes.

7 Q. Did Province work -- sorry. Strike  
8 that.

9 In the course of Province's work on this  
10 case, are you aware, did it ever collaborate or work  
11 together with FTI on anything?

12 A. Yes.

13 Q. In what capacity? On what?

14 A. FTI's a -- and the committee is a  
15 consultation party, so we correspond with them on  
16 various important matters, and have throughout the  
17 case.

18 Q. Do you think you collaborated with  
19 them -- sorry. Strike that.

20 Do you recall collaborating with FTI in  
21 the preparation of the surcharge analysis?

22 A. We certainly corresponded about it, yes.

23 Q. What were the substance of those  
24 communications, if you can recall?

25 A. Feedback on amounts for professional

1 fees, as we've reviewed, the legitimacy or viability  
2 of costs, and off the top of my head, the rest I  
3 don't remember.

4 Is there something else you can show me  
5 that you're referring to?

6 Q. Not necessarily. Let's stick with what  
7 you said.

8 MR. KISSNER: So can you read back the  
9 first portion of his answer, please?

10 (The record is read by the reporter.)

11 BY MR. KISSNER:

12 Q. Do you recall what the substance of that  
13 feedback on the amount of professional fees were?

14 A. The amounts of the professional fees  
15 themselves.

16 Q. Okay. And did you have a disagreement  
17 as to the amount of professional fees due or was it  
18 some other issue?

19 A. No, I don't think there was any  
20 disagreement over the fees.

21 MR. KISSNER: And sorry -- going back to  
22 the earlier answer, could you read the next portion  
23 of it?

24 (The record is read by the reporter.)

25 ///

1 BY MR. KISSNER:

2 Q. Can you elaborate on what the feedback  
3 you received from FTI was on the legitimacy or  
4 viability of costs?

5 A. Sure. For example, at one point there  
6 was a thought of unencumbered assets as an  
7 adjustment, and I believe FTI noted that that was  
8 not an appropriate adjustment and it was removed  
9 from the draft.

10 Q. Can you explain what an "adjustment for  
11 unencumbered assets" means?

12 A. Sure. It was a hypothetical placeholder  
13 for whether or not some of the proceeds were  
14 allocable to unencumbered assets, which in this case  
15 there were not.

16 Q. And was it FTI that was advocating for  
17 the allocation of certain proceeds to unencumbered  
18 assets or vice versa?

19 A. I believe FTI noted that it should be  
20 removed.

21 Q. That it should be removed.

22 Do you recall what the reasoning was?

23 A. I don't.

24 Q. So just to make sure I'm understanding  
25 correctly, there was an earlier draft of your

1 surcharge analysis in which a certain percentage of  
2 proceeds were being allocated to unencumbered  
3 assets?

4 A. Maybe at one point, but it was simply a  
5 placeholder.

6 Q. Now, was it proceeds being allocated or  
7 costs being allocated to unencumbered assets?

8 A. I believe it was proceeds, but it  
9 ultimately wasn't relevant to the final product.

10 Q. Okay. But under this current draft --  
11 sorry, just help me understand. And I'm not being  
12 purposely dense. I understand that we're talking  
13 about an abstract document.

14 So this surcharge analysis -- let's turn  
15 back to the surcharge analysis, why don't we, to  
16 Tab 3 which was Exhibit 2.

17 A. Sure.

18 Q. And we can go to Exhibit A to your  
19 surcharge analysis which has the two charts. And if  
20 we can go to the second chart, that's on page 9 of  
21 11, right?

22 Are you there?

23 A. Yes.

24 Q. And so we talked earlier about how, more  
25 or less, this is a summary of charges -- sorry.

1 Strike that.

2 We talked earlier about how this was,  
3 more or less, a summary of costs to be surcharged,  
4 right?

5 A. Yes.

6 Q. And that this chart allocates -- or  
7 proposes to allocate, rather, those costs to the  
8 various secured lenders, correct?

9 A. I believe, though, it does allocate  
10 costs to certain lenders, it's subject to material  
11 change, as noted on top, and the purpose is  
12 ultimately to account for the costs to be  
13 surcharged.

14 Q. Yeah, understood.

15 But I guess what I'm getting at is  
16 there's a total amount of warehouse costs that's  
17 \$518,000, right?

18 A. Correct.

19 Q. And then there's a total other  
20 sale-related costs of \$1.58 million, more or less,  
21 right?

22 A. Correct.

23 Q. And so this chart -- granted, it might  
24 be preliminary and subject to change, but this chart  
25 sets forth a proposal for how that \$518,000 and

1 \$1.58 million would be allocated among the three  
2 secured parties, correct?

3 A. At this time, yes.

4 Q. And this chart allocates costs among  
5 three different parties, correct?

6 A. Correct.

7 Q. And one of those is Enigma?

8 A. Correct.

9 Q. The other one is Genesis?

10 A. Correct.

11 Q. And the other one is AV Tech, correct?

12 A. Correct.

13 Q. And it was a draft of this chart on  
14 which FTI provided you comments or something else?

15 A. A much earlier version similar to the  
16 drafts that we referenced earlier today.

17 Q. And so we just talked about how this  
18 chart allocates costs to three different parties,  
19 right?

20 A. Correct.

21 Q. Am I given to understand, then, that in  
22 a prior iteration, this chart allocated costs to  
23 more than three parties?

24 MR. MANN: Objection. Form.

25 THE WITNESS: I want to clarify, in a



1 previous and prior draft that was ultimately not  
2 used or final work product.

3 BY MR. KISSNER:

4 Q. But in that previous prior draft that  
5 was not used or did not become final work product,  
6 the allocation of costs was to more than three  
7 entities or categories, correct?

8 A. I don't believe that that's correct.

9 Q. You don't believe that's correct?

10 A. That does not sound correct to me.

11 Q. Okay. Well, try and help me understand,  
12 then.

13 So you said there was a prior iteration  
14 of this chart, right?

15 A. There was a working draft, correct.

16 Q. Okay. And that working draft,  
17 presumably you sent it to FTI to solicit comment on  
18 it?

19 A. I don't recall if it was sent to FTI.  
20 Yeah.

21 Q. But FTI provided you with feedback on  
22 the analysis, right?

23 A. I, at the very least, know that that  
24 particular topic was discussed.

25 Q. Okay. And one of the items of feedback

1 that they provided was on, I believe you said the  
2 viability of certain costs, right?

3 A. Correct.

4 Q. And when I asked you about that, you  
5 said that there had originally been included an  
6 allocation to unencumbered assets that FTI thought  
7 should be removed; is that accurate?

8 A. In a prior draft, not in the 50(c)6 --  
9 506(c) surcharge in front of us --

10 Q. Okay.

11 A. -- which included things outside of this  
12 particular analysis.

13 Q. Okay. So under that prior draft, there  
14 was an allocation of certain of these costs to  
15 Enigma, right?

16 A. I believe it was just a reduction of  
17 gross proceeds, but ultimately wasn't true.

18 Q. Right. But I'm just sort of getting --  
19 because, again, we're talking about a document  
20 that's not in front of either of us, so I'm trying  
21 to sort of paint a picture of what this document  
22 looked like.

23 So in there, there was a line that  
24 presumably said "reduction to Enigma proceeds for  
25 warehouse costs," or something similar?

1 A. No.

2 Q. There wasn't?

3 A. No, not to Enigma.

4 Q. So the prior draft of this did not  
5 allocate any costs to Enigma?

6 A. No, that's not what I said.

7 MR. MANN: Objection. Form.

8 THE WITNESS: The cost wasn't  
9 specifically allocated to Enigma. It was just an  
10 adjustment to gross proceeds as a placeholder, and  
11 not part of this 506(c) analysis, it was part of a  
12 sale analysis that wasn't filed or a final work  
13 product.

14 BY MR. KISSNER:

15 Q. Got it.

16 I think I am now --

17 A. It was simply just giving feedback -- or  
18 an example of feedback the committee provided along  
19 the way to developing this analysis (indicating),  
20 which did not include the adjustment for  
21 unencumbered assets.

22 Q. Okay. I --

23 A. Said differently, it would be a benefit  
24 to Enigma that it was removed.

25 Q. Correct. We're on the same page there.

1 If I can attempt to recap, and you can tell me if  
2 I'm wrong.

3 But at some point there was a draft  
4 iteration of the surcharge analysis, that was not a  
5 final product that was subject to revision and did,  
6 in fact, undergo revision, that allocated some  
7 portion of costs to unencumbered assets?

8 A. Not allocated costs, it was an  
9 adjustment to gross proceeds.

10 Q. Okay. And what does that mean? Just  
11 help me understand.

12 A. Instead of 4.2 million, for example, if  
13 the allocation was 100,000 it would be 4.1 million  
14 of proceeds, which would then be surcharged.

15 Q. Do you have an understanding as to why  
16 FTI wanted that removed?

17 A. Because, to my understanding, the  
18 reasoning would be maybe that there's a blanket lien  
19 from Genesis, therefore no unencumbered assets were  
20 sold in that particular sale. But again, a question  
21 for counsel.

22 Q. Okay. Understood. That's very helpful.  
23 And could you just turn to Tab 33, which  
24 I think we can mark as Exhibit 21.

25 (Exhibit 21 marked.)

1 BY MR. KISSNER:

2 Q. Do you recognize this document?

3 A. The e-mail correspondence with Michael  
4 Tucker, is that what you're referring to? I just  
5 want to make sure I'm on the right --

6 Q. Yep.

7 A. Yes, I do.

8 Q. Can you describe what it is?

9 A. It's an e-mail from Michael Tucker to me  
10 and two other estate professionals which says,  
11 "Please send what you plan to submit today which is  
12 the due date. I would like to see the schedule ASAP  
13 given it is due today. Thanks."

14 Q. And the schedule, what do you understand  
15 "the schedule" to refer to?

16 A. I believe it was the document that  
17 Enigma received that day, which had adjustments  
18 beyond my understanding of the 506(c) adjustments  
19 are, including adequate protection adjustments which  
20 have, I believe, since been removed.

21 Q. Okay. And we've looked at that, right?  
22 Sorry for talking out loud.

23 Do you recall making any changes to your  
24 surcharge analysis after sharing a copy with FTI on  
25 July 10th?

1 A. I don't remember.

2 Q. Just one more and then we can stop  
3 looking at invoices. How about that?

4 Why don't we go to -- sorry. Let's stay  
5 where we are.

6 You said before, CKDL Credit, they're  
7 the DIP lender in this case?

8 A. Yes.

9 Q. Did your surcharge analysis include any  
10 fees charged by CKDL?

11 A. No, not that I'm aware of.

12 Q. It didn't? Okay.

13 So can we go to Tab 17, which we'll mark  
14 as 22.

15 (Exhibit 22 marked.)

16 BY MR. KISSNER:

17 Q. Let me know when you're there.

18 A. I'm there.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. Can you tell me what it is?

22 A. This is an invoice from -- hopefully, I  
23 pronounce this correctly -- Berger Singerman.

24 Q. And was this invoice included in the  
25 surcharge analysis?

1 A. No.

2 Q. Go to Tab 18, which we'll mark as 23.

3 (Exhibit 23 marked.)

4 THE WITNESS: I'm there.

5 BY MR. KISSNER:

6 Q. Do you recognize this document?

7 A. Sorry, to clarify, you said 18, correct?

8 Q. Yes.

9 A. This appears to be an invoice from  
10 Sylvester Polednak.

11 Q. Sorry, go ahead.

12 A. That's all.

13 Q. Do you know who Sylvester & Polednak  
14 are?

15 A. DIP agent attorneys.

16 Q. So they're counsel to CKDL as DIP  
17 lender?

18 A. I believe local counsel.

19 Q. And was this invoice included in your  
20 surcharge analysis?

21 A. No.

22 Q. Okay. Great.

23 Go to Tab 19, which we'll mark as 24.

24 (Exhibit 24 marked.)

25 ///

1 BY MR. KISSNER:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. It's an invoice from CKDL Credit billed  
6 to Coin Cloud.

7 Q. Was this invoice included in the  
8 surcharge analysis?

9 A. No.

10 Q. And then Tab 20, which we'll mark as  
11 Exhibit 25.

12 (Exhibit 25 marked.)

13 BY MR. KISSNER:

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. Can you tell me what it is?

17 A. This is an invoice from Berger  
18 Singerman.

19 Q. And was this included in your surcharge  
20 analysis?

21 A. No.

22 Q. Three more.

23 Tab 21, we'll mark this as Exhibit 26.

24 (Exhibit 26 marked.)

25 ///



1 BY MR. KISSNER:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. This is an invoice from NCC Group.

6 Q. And was this included in your surcharge  
7 analysis?

8 A. No.

9 Q. Go to Tab 22, and we'll mark this as  
10 Exhibit 27.

11 (Exhibit 27 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this?

14 A. Yes.

15 Q. What is it?

16 A. This is an invoice from 507 Capital who  
17 is, I believe, the financial advisor to the DIP  
18 lender.

19 Q. Was this included in your surcharge  
20 analysis?

21 A. No.

22 Q. And then finally Tab 23, which we'll  
23 mark as Exhibit 28.

24 (Exhibit 28 marked.)

25 ///

1 BY MR. KISSNER:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. This is an invoice from 507 Capital,  
6 financial advisor to the DIP lender.

7 Q. And was this included in your surcharge  
8 analysis?

9 A. No.

10 Q. Okay. Is there a reason why the DIP  
11 lender's fees were not included in your surcharge  
12 analysis?

13 A. I don't believe they provided accretive  
14 value to the sale process and, in fact, I think they  
15 were an interested party -- I guess I'd leave it up  
16 to counsel -- but therefore not appropriate to  
17 include.

18 Q. Was the DIP lender a consultation party  
19 in connection with the sale, do you recall?

20 A. I believe they were a consultation  
21 party. I don't know that they were a consultation  
22 party to the sale, given their potential conflict.

23 Q. Okay. That's fair.

24 We'll shift gears again, and let's go to  
25 Tab 32, which I'll ask to be marked as Exhibit 29.

1 (Exhibit 29 marked.)

2 BY MR. KISSNER:

3 Q. Okay. Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. This is a preliminary wind-down analysis  
7 of the estate post set.

8 Q. Did you prepare this preliminary  
9 wind-down analysis?

10 A. Physically, yes, with feedback from  
11 other debtor professionals.

12 Q. And who are those debtor professionals?

13 A. Fox Rothschild and Province.

14 Q. Do you know when this was prepared?

15 A. Off the top of my head, I do not know  
16 the date this was prepared.

17 Q. Can we flip back to Tab 31, which I'll  
18 ask be marked as Exhibit 30.

19 (Exhibit 30 marked.)

20 BY MR. KISSNER:

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. This is an e-mail exchange between  
25 myself and FTI with, looks like, Fox cc'd as well.

1 Q. Can you read the first sentence of your  
2 e-mail after "Hi Michael"?

3 A. Sure. "Attached is an updated wind-down  
4 budget as we have discussed." Sorry.

5 Q. No, that's fine.  
6 What do you understand "updated  
7 wind-down budget" to refer to?

8 A. A newer version than the previous  
9 iteration that we had provided them.

10 Q. Do you think that the updated wind-down  
11 budget is Exhibit 29, Tab 32, which we just looked  
12 at?

13 A. I believe so, yes.

14 Q. Okay. And can you -- looking at  
15 Exhibit 30, Tab 31, can you read the date of your  
16 e-mail?

17 A. Sure. July 18th, 2023.

18 Q. Does that refresh your recollection as  
19 to when the updated wind -- strike that. Does  
20 that -- strike that.

21 Does that refresh your recollection of  
22 when the preliminary wind-down analysis marked as  
23 Exhibit 29 was prepared?

24 A. Yes. It makes sense that this was also  
25 provided on July 18th.

1 Q. Now, is everything in this document true  
2 and accurate, to the best of your knowledge?

3 MR. MANN: Objection. Form.

4 THE WITNESS: No.

5 BY MR. KISSNER:

6 Q. No?

7 Was it true -- sorry. Strike that.

8 What about it is not true and accurate?

9 A. This document is a forecast of the  
10 debtor's performance and, as it notes, "all amounts  
11 are estimates and not guarantees of actual results"  
12 and "the recipient of this analysis should use their  
13 own discretion in adjusting the model's  
14 assumptions."

15 Q. So let's go maybe break that down.

16 A. Sure.

17 Q. So there are assumptions in this  
18 wind-down analysis; fair to say?

19 A. Yes.

20 Q. And to your knowledge, are those  
21 assumptions true and accurate today?

22 MR. MANN: Objection. Form.

23 THE WITNESS: These assumptions were  
24 reasonable placeholders that were put into this  
25 model prior to several key events that would make

1 this more accurate today.

2 BY MR. KISSNER:

3 Q. Sure. At the time, though, that you  
4 prepared this preliminary wind-down analysis, do you  
5 think that the assumptions in it were reasonable and  
6 based off of accurate information?

7 MR. MANN: Objection. Form.

8 THE WITNESS: I believe that many of  
9 these assumptions were very early estimates meant to  
10 give, in this instance, both the debtor and the  
11 committee a tool to assess outcomes that could  
12 happen but aren't guaranteed.

13 BY MR. KISSNER:

14 Q. So you said one of the purposes was to  
15 give the committee a tool for analysis, correct?

16 A. One of the committee's mandates, I  
17 believe, is overseeing liquidity, things like that,  
18 and they wanted to see an updated cash forecast.

19 Q. Did the committee assist you in  
20 preparing this analysis?

21 A. No, I don't believe so, which is why I  
22 made sure to explain that they should use their own  
23 discretion in adjusting the assumptions, because we  
24 did not have certainty around many of them that were  
25 significant in the output.

1 Q. Let's talk a little bit about those  
2 assumptions.

3 Can you explain what some of the  
4 assumptions were that you made in preparing this  
5 document?

6 A. Sure. On page 1 of this tab, Brazil  
7 sale proceeds or the liquidation of it, the  
8 Bitaccess/Bitcoin Depot settlement, MTL sale  
9 proceeds, pursuit of other litigation assets, Cole  
10 Kepro settlement, among many others.

11 Q. And for those assumptions, it looks like  
12 there's a column entitled "Toggle" in which there's  
13 a number of scenarios. Do you see that?

14 A. Yes.

15 Q. Can you explain what these various  
16 scenarios mean?

17 A. Sure. They're essentially just options  
18 that would allow the user to simply toggle different  
19 numbers instead of manually inputting a specific  
20 number every time they wanted to see a different  
21 outcome.

22 Q. Okay. So for the assumptions listed on  
23 page 1, the user of this model could toggle  
24 different inputs and the model would spit out a  
25 different result; is that a fair way of

1 characterizing this?

2 A. Correct.

3 Q. Is one of the assumptions in this model  
4 distributions to secured creditors?

5 A. Yes.

6 Q. Okay. Was that something that the user  
7 could toggle in this model, do you recall?

8 A. The user would have been able to toggle  
9 unpaid Trangistics claim, post-petition DLI claims  
10 and, as we discussed earlier, the sale allocation  
11 for unencumbered assets, which ultimately was not  
12 used.

13 Q. And are you reading that from somewhere  
14 or is that your recollection?

15 A. I'm reading it from this page, the first  
16 page.

17 Q. Okay. If we could go to the second  
18 page. And, again, I'm sorry that this is so small.

19 If you go about two-thirds of the way  
20 down the page, there's a line entitled "disbursement  
21 of admin accruals and restructuring costs." Do you  
22 see that?

23 A. Yes.

24 Q. And a little bit below that, about two  
25 lines down, there's a row that says "secured claim



1 disbursement to Enigma"?

2 A. Yes.

3 Q. And there's a dollar amount listed a  
4 little further over. Can you read what that dollar  
5 amount is?

6 A. \$780,651.

7 Q. So is it fair to say, then, this  
8 wind-down budget is premised on the assumption that  
9 Enigma will only receive approximately \$781,000 on  
10 its claims?

11 A. No. This model is premised on the  
12 assumption that the user inputs, with their own  
13 discretion, of several key factors that outcome the  
14 weeks that are forecasted in this budget.

15 Q. Okay. Well, if you changed -- strike  
16 that.

17 If one were to modify this \$780,651  
18 figure, would that affect the output of the model?

19 MR. MANN: Objection. Form.

20 THE WITNESS: If you were to modify the  
21 disbursement to Enigma, the cash balance would  
22 change.

23 BY MR. KISSNER:

24 Q. So is it fair to say that the more money  
25 that went to Enigma, the less money would be

1 available to satisfy the other line item  
2 disbursements on here? Is that fair?

3 MR. MANN: Objection. Form.

4 THE WITNESS: Though this forecast shows  
5 all of these disbursements together, I believe the  
6 sale proceeds disbursements are a separate issue  
7 than the wind-down operations of the debtor. This  
8 is simply meant to reflect the amount of cash within  
9 the estate. So to the extent one of these payments  
10 in this forecast are a qualified surcharge, those  
11 proceeds in the surcharge would pay those expenses,  
12 but I don't think they would benefit any of these  
13 other line items.

14 BY MR. KISSNER:

15 Q. I guess what I'm trying to get at is --  
16 well, I can try to get at it another way.

17 Are you familiar with the concept of  
18 zero sum?

19 A. Sure. As in it's always net zero?

20 Q. Yeah, or in a sense that when there are  
21 finite resources, you know, more for one means less  
22 for the other, right?

23 A. Yes.

24 Q. Would you say that the debtor's estate  
25 is, in a certain sense, a zero sum problem?

1 MR. MANN: Objection. Form.

2 THE WITNESS: Is every company not in a  
3 zero sum problem?

4 BY MR. KISSNER:

5 Q. You tell me.

6 MR. MANN: Objection. Form.

7 THE WITNESS: Every company has finite  
8 resources.

9 BY MR. KISSNER:

10 Q. Right. So would it be fair to say that  
11 the more money that goes to pay Enigma, the less  
12 money is available to pay for other things?

13 MR. MANN: Objection. Form.

14 THE WITNESS: No.

15 BY MR. KISSNER:

16 Q. No?

17 Why wouldn't that be the case?

18 A. Because if other things -- if you're  
19 including qualified 506(c) surcharges in "other  
20 things," then sure, but I believe that's a separate  
21 issue.

22 Q. Sure. But --

23 A. For example, increasing a disbursement  
24 to Enigma won't impact, for example, payroll. That  
25 surcharge is not for payroll. It's for a specific

1 claim.

2 Q. Let's talk about things that need to be  
3 satisfied through the bankruptcy, then, if that's  
4 okay.

5 A. Sure.

6 Q. So there are certain administrative  
7 expense claims that the debtor would propose to pay  
8 under this wind-down budget; is that correct?

9 A. The debtor isn't proposing anything  
10 here, just simply providing a tool for the cash  
11 forecast.

12 Q. Fair enough.

13 This preliminary wind-down analysis,  
14 though, it includes certain administrative expense  
15 claims, correct?

16 A. Correct. Prior to the administrative  
17 bar date, I believe was shortly after this was  
18 produced.

19 Q. Why don't we go about halfway down the  
20 page to where it says "administrative disbursements"  
21 and go all the way over to the right. There's a  
22 number listed there. Can you read that?

23 A. I'm not sure I follow. Disbursement of  
24 admin accruals, is that what you're --

25 Q. No, it's -- are we looking at the same

1 thing? Yeah.

2 It's right before cash flow, after wind  
3 down.

4 A. I see.

5 Q. So administrative disbursements.

6 And if you'd go all the way over to the  
7 right, there's a dollar amount listed. Can you say  
8 what that is?

9 A. \$921,061, and that's a negative.

10 Q. Okay. And we've been -- I've at least  
11 been referring to this as your preliminary wind-down  
12 analysis. Would it also be fair to refer to this as  
13 a 13-week cash flow?

14 A. It's similar in concept, yes.

15 Q. Okay. Do you see that there's 13 weeks  
16 listed at the top?

17 A. I see 12 weeks -- oh, sorry, yes, there  
18 is 13 because of week zero.

19 Q. Do you understand this 13-week cash-flow  
20 forecast to say that there are projected  
21 administrative disbursements of \$921,061 over the  
22 13 weeks beginning July 10th?

23 A. I see that this model, with the  
24 assumptions set to reasonable placeholders that are  
25 not intended to be indications of reality, by the

1 debtor, as noted in the e-mail, that it says admin  
2 disbursements are \$921,061, but that this is not the  
3 debtor's best guess of the forecasted periods.

4 Q. That's fair.

5 If you were to try and pay this \$921,061  
6 over the next 13 weeks, you'd presumably need some  
7 money to do so, right?

8 MR. MANN: Objection. Form.

9 THE WITNESS: Yes, either that the  
10 debtor already has or that the debtor will collect.

11 BY MR. KISSNER:

12 Q. And then going a little further down, we  
13 were talking, before, there's a secured claim  
14 disbursement to Enigma, right?

15 A. Yes.

16 Q. And it's in the amount of \$780,651,  
17 correct?

18 A. Correct.

19 Q. And so do you understand this to mean  
20 that the debtor projected that over the 13 weeks  
21 beginning July 10th, there would be \$780,651 in  
22 disbursements to Enigma?

23 A. No.

24 Q. What do you understand this to mean?

25 A. I understand this to be a tool that has

1 not been adjusted and doesn't have firm enough  
2 support at this point, hence the caveats and  
3 incomplete analytics --

4 Q. Sure.

5 A. -- that shows placeholder numbers, but.

6 Q. Sure. That's fine.

7 Subject to all those caveats, though,  
8 with the understanding that this was a draft and  
9 that there were assumptions baked into it, though,  
10 is this not a forecast of what would be payable to  
11 Enigma over the 13 weeks beginning July 10th?

12 MR. MANN: Objection. Form.

13 THE WITNESS: I wouldn't characterize  
14 these as assumptions, I would characterize them as  
15 reasonable placeholders for the user to adjust.

16 BY MR. KISSNER:

17 Q. Now, if the debtor were to wish to make  
18 a payment of 750 -- \$780,651 to Enigma, again, it  
19 would presumably need some cash to do so, right?

20 A. Correct.

21 Q. And cash that had been used to pay  
22 \$921,000 of administrative disbursements, that cash  
23 would no longer be available to pay Enigma, correct?

24 MR. MANN: Objection. Form.

25 THE WITNESS: The cash that would be

1 otherwise disbursed to Enigma is held in a separate  
2 escrow account, not to be touched by the company's  
3 operations, at least until ordered by the court.

4 BY MR. KISSNER:

5 Q. That's a fair point. Let's use a  
6 different example then.

7 Let's go down to, say, the last  
8 category, bankruptcy professional disbursements and  
9 carve-out reservations. Are you there?

10 A. Yes.

11 Q. And do you see a line that says "debtor  
12 financial advisor, Province"?

13 A. Yes.

14 Q. And if you go over, you should see a  
15 dollar amount listed there. Can you tell me what  
16 that dollar amount says?

17 A. Yes, 1.4 million in the negative.

18 Q. So do you understand this to mean that  
19 the debtor was forecasting that, in the 13 weeks  
20 beginning July 10th, it would owe Province  
21 \$1.4 million?

22 A. I believe that this was a draft that  
23 didn't have all of the necessary information yet and  
24 would require reasonable assumptions put in by the  
25 user to make the model accurate, as we were unable



1 to come to a consensus at this point on what the  
2 proper assumptions were.

3 Q. But subject to those caveats and subject  
4 to those assumptions, this 13-week cash-flow  
5 forecast reflects a projection that Province would  
6 be paid \$1.4 million in the 13 weeks beginning  
7 July 10th, correct?

8 A. If the user were to put that placeholder  
9 in the model, then that would be the projection,  
10 yes.

11 Q. Do you know if \$1.4 million is sitting  
12 in an escrow account?

13 A. I don't believe, other than the sale  
14 proceeds that are in the escrow account currently.

15 Q. Do you think the estate has enough money  
16 to pay Province's \$1.4 million fee?

17 A. I believe the estate, as you can see in  
18 its most recent filings, believes that there is a  
19 reasonable avenue to paying all of the estate's  
20 administrative expenses.

21 Q. Is it your opinion that, absent a  
22 successful surcharge, the estate would have  
23 sufficient funds to pay Province \$1.4 million?

24 MR. MANN: Objection. Form.

25 THE WITNESS: I think it's speculative

1 and will require review of more assumptions than I'm  
2 comfortable doing at this moment, to determine  
3 whether or not that particular surcharge is the  
4 difference between not enough money and enough  
5 money.

6 BY MR. KISSNER:

7 Q. Have you ever had any discussions with  
8 anybody at Province about the fees owed to Province?

9 A. Sure, yes.

10 Q. Can you tell me a little bit -- strike  
11 that, please.

12 Can you tell me a little bit about those  
13 discussions?

14 MR. MANN: Objection. Form.

15 THE WITNESS: I'd have to defer to my  
16 general counsel on whether or not I'm allowed to  
17 discuss conversations on collections, but we've  
18 certainly considered it along the way of monitoring  
19 the estate's cash.

20 BY MR. KISSNER:

21 Q. Did anybody ever suggest to you that you  
22 needed to surcharge the secured lenders in order to  
23 pay Province \$1.4 million?

24 A. I don't believe so.

25 Q. You don't believe so?

1           A.           No, I don't remember -- I don't remember  
2           anyone saying that. I believe there are, as you can  
3           see, a variety of different avenues of recovery of  
4           assets that the debtor needs to pursue, including  
5           objections to claims that would ultimately benefit  
6           the secured lenders, but not that it's necessary to  
7           pay Province's accrued fees.

8           Q.           Let's go up one line to "debtor counsel,  
9           Fox Rothschild." Do you see that?

10          A.           Yes.

11          Q.           Can you go all the way over and read the  
12          dollar amount listed?

13          A.           The dollar amount is negative  
14          1.2 million.

15          Q.           Do you understand this to mean that, at  
16          the time this 13-week cash-flow forecast was  
17          prepared, the debtor was projecting that in the  
18          13 weeks beginning July 10th Fox Rothschild would  
19          receive \$1.2 million?

20          A.           I believe that this analysis has a  
21          variety of illustrative placeholders, including  
22          estimates for professionals that have not otherwise  
23          filed fee applications on the docket or received  
24          certificates of no objection, and this is a  
25          reasonable placeholder for a user to put in their

1 own assumptions.

2 Q. And without revealing anything  
3 privileged, have you talked to anybody at Fox  
4 Rothschild about their fees?

5 A. We've certainly had conversations about  
6 getting fee applications on file and estimates of  
7 what months might cost at the conclusion of the  
8 month, but I -- broadly speaking, I would say that  
9 covers it.

10 Q. Have you had any conversations with Fox  
11 Rothschild about the ability to collect on their  
12 fees?

13 A. I believe conversations that may have  
14 brought up that topic were focused solely on  
15 recoveries to the administrative claims class more  
16 broadly.

17 Q. Do you recall anybody at Fox Rothschild  
18 telling you that, if not for the surcharge, the  
19 estate would be unable to pay Fox Rothschild  
20 \$1.2 million?

21 MR. MANN: I feel like -- objection,  
22 that that could stem a little close to privilege of  
23 them talking about the invoices and paying their  
24 attorneys their fees.

25 MR. KISSNER: Are you instructing him

1 not to answer?

2 MR. MANN: Yeah.

3 MR. KISSNER: Okay.

4 BY MR. KISSNER:

5 Q. Let's go down to a few more lines to  
6 "independent director."

7 A. Sure.

8 Q. And if you look over to the right, you  
9 should see a dollar amount. Can you tell me what  
10 that dollar amount is?

11 A. Negative \$25,000.

12 Q. Do you understand this to mean that at  
13 the time this 13-week cash-flow forecast was  
14 prepared, the debtor was projecting that in the  
15 13 weeks beginning July 10th the independent  
16 director would receive \$25,000?

17 A. I believe that this model is reliant on  
18 the user putting in their own assumptions and  
19 currently it has reasonable placeholders, but the  
20 independent director's fee is \$25,000 a month.

21 Q. And is that fee included in the  
22 surcharge analysis?

23 A. No, I don't believe so.

24 Q. Do you have a sense of why or why not?

25 A. No.

1 Q. Fair.

2 Can you go down to "UCC financial  
3 advisor"?

4 A. Yes.

5 Q. And can you go over to the very far  
6 right and read me the dollar amount there?

7 A. Sure. Negative \$650,000.

8 Q. Do you understand this to mean that at  
9 the time this forecast was prepared, the debtor was  
10 projecting that in the 13 weeks beginning July 10th  
11 FTI was forecast to receive \$650,000?

12 A. I believe that this output is reliant on  
13 the user putting in their own assumptions and has  
14 reasonable placeholders until they do so.

15 Q. And do you recall talking to FTI about  
16 their fees?

17 A. In any particular instance?

18 Q. Any particular instance.

19 A. Sure. We've discussed FTI's fees  
20 before, like the 506(c) surcharge.

21 Q. Okay. Was there any -- ever any  
22 discussion with FTI about the collectability of  
23 their fees?

24 A. I don't believe so, not out of the  
25 context of recovery of the general administrative

1 claims class as a whole.

2 Q. And do you recall ever being told that  
3 if the surcharge wasn't successful that there  
4 wouldn't be enough money to pay FTI?

5 A. No.

6 Q. Okay. And then let's go down one more,  
7 to "UCC counsel, SewKis." Do you see that?

8 A. Yes.

9 Q. Can you read the dollar amount all the  
10 way on the right?

11 A. Negative \$750,000.

12 Q. Did you understand that to mean that at  
13 the time of this forecast the debtor was projecting  
14 that in the 13 weeks beginning July 10th Seward &  
15 Kissel was projected to receive \$750,000?

16 A. Can you repeat the question?

17 Q. Sure. So you see where it says negative  
18 \$750,000, correct?

19 A. Yes.

20 Q. Do you understand that to mean that, at  
21 the time this forecast was prepared, the debtor  
22 projected that in the 13 weeks beginning July 10th  
23 Seward & Kissel would receive \$750,000?

24 A. I believe that the amounts in this  
25 forecast are placeholders meant to be adjusted at --

1 by its end recipient, and currently has reasonable  
2 placeholders in the forecast.

3 Q. Could you -- well, I guess, let me close  
4 the loop.

5 Have you ever talked to anybody at  
6 Seward & Kissel about their fees?

7 A. Not outside of the context of either the  
8 surcharge or general amounts owing, in order to keep  
9 track of the budget.

10 Q. And did you ever talk to anybody at  
11 Seward & Kissel about the collectability of their  
12 fees?

13 A. Not outside of the context of recoveries  
14 for the general administrative claims class.

15 Q. And do you recall ever being told that  
16 the surcharge wasn't successful Seward & Kissel --  
17 strike that.

18 Do you recall ever being told that, if  
19 the surcharge was not successful, there wouldn't be  
20 enough money to pay Seward & Kissel?

21 A. No.

22 Q. And then the line below it, there's a  
23 dollar amount all the way at the end. Could you  
24 read that?

25 A. Can you clarify? You're talking about



1 the total disbursements to professionals?

2 Q. Yeah, I am.

3 A. The total to the furthest right is  
4 4,675,000.

5 Q. So is that fair to say that this model  
6 is forecasting \$4.675 million in unpaid professional  
7 fees?

8 A. I think it's, this model has many  
9 placeholders that are meant to be adjusted and were  
10 highly preliminary.

11 Q. Sure. But is this \$4.675 million, is  
12 this the placeholder for unpaid professional fees  
13 that would need to be satisfied?

14 A. That's a total of -- as I count -- eight  
15 illustrative placeholders that total \$4,675,000, but  
16 would need to be adjusted.

17 Q. And what are some of those adjustments  
18 that would need to be made?

19 A. Inclusion of file fees, as they came in,  
20 and adjusted run rates based on the most recent  
21 events of the case. For example, the ending of the  
22 operations in the sale process and what run rates  
23 may look like without those work streams.

24 Q. Would it be fair to say then that you  
25 expect the total amount of professional fees in this

1 case will be higher than \$4.675 million?

2 MR. MANN: Objection. Form.

3 THE WITNESS: I don't currently have an  
4 estimate, off the top of my head, of what the  
5 professional fees will be in this case outstanding.

6 BY MR. KISSNER:

7 Q. Do you think the estate can currently  
8 afford to pay \$4.675 million in professional fees?

9 MR. MANN: Objection. Form.

10 THE WITNESS: I believe, based on a  
11 variety of factors, including objections to various  
12 administrative claims and the collection of many of  
13 the debtor's recoverable assets, the debtor will  
14 likely be able to pay its administrative claims.

15 BY MR. KISSNER:

16 Q. Would it be fair to say that its ability  
17 to do so is contingent, at least in part, on  
18 succeeding at surcharging the secured lenders'  
19 collateral?

20 MR. MANN: Objection. Form.

21 THE WITNESS: The debtor and its ability  
22 to pay off its administrative claims are dependent  
23 in that it's one of many factors that will  
24 ultimately give us an end result of this entire  
25 bankruptcy, but would not say that it is -- "it is,"

1 being the debtor -- is completely reliant on the  
2 surcharge.

3 BY MR. KISSNER:

4 Q. Have you ever analyzed what would happen  
5 if the debtor's surcharge motion were completely  
6 unsuccessful?

7 MR. MANN: Objection. Form.

8 THE WITNESS: Not that I recall, but  
9 adjusting a variety of assumptions in this model or  
10 an updated version, you could come to any number of  
11 results depending on the assumptions that the user  
12 puts in the model.

13 BY MR. KISSNER:

14 Q. But have you ever analyzed the specific  
15 scenario of the surcharge request being denied in  
16 its entirety?

17 MR. MANN: Objection. Form.

18 THE WITNESS: Not that I remember, and  
19 if I did, it certainly would have been privileged.

20 BY MR. KISSNER:

21 Q. Okay.

22 MR. KISSNER: We can go off the record.

23 (A recess taken.)

24 BY MR. KISSNER:

25 Q. Before we proceed, during the break did

1 you talk to anybody about the substance of your  
2 testimony?

3 A. No.

4 Q. Okay. So shifting gears a little bit,  
5 hopefully for the last time, let's look at Tab 1,  
6 Exhibit 1 again real quick. And if you can go to  
7 page 3 of Tab 1.

8 So Tab 1 -- oh, sorry. I'm talking  
9 about the physical binder, Tab 1, which is  
10 Exhibit 1. It's the notice of deposition.

11 If you go to page 3, and so topic 10(c),  
12 do you see that?

13 A. The part that reads "that certain  
14 document entitled 726" and so on --

15 Q. Yes.

16 A. -- preliminary sale analysis?

17 Q. Yep.

18 And you said you're prepared to testify  
19 on that topic?

20 A. Yes.

21 Q. Okay. So backing up, zooming out, what  
22 happened to the debtor's kiosks in this case?

23 A. Can you clarify what you mean by that?

24 Q. Sure. What was the ultimate disposition  
25 of the -- sorry. Strike that.

1 So I believe earlier you said that the  
2 debtor, at the time of its bankruptcy filing, had an  
3 excess of 7,000 kiosks that it owned?

4 A. Those were what the records said, yes.

5 Q. And understanding that the records may  
6 not have always been accurate, is that -- would you  
7 say that's directionally correct --

8 A. Yeah.

9 Q. -- 7,000-ish?

10 Okay. Broadly speaking, what happened  
11 to those 7,000-or-so DCMs during the case?

12 MR. MANN: Objection. Form.

13 THE WITNESS: They were either abandoned  
14 and surrendered to secured lenders, sold in the 363  
15 auction to Heller Capital and its affiliates. And I  
16 believe a small subset went down to Brazil at one  
17 point earlier in the bankruptcy.

18 BY MR. KISSNER:

19 Q. Okay. Do you know about how many of  
20 them were sold to Heller Capital?

21 A. I believe -- I want to make sure I get  
22 the number right. It was about 5700.

23 Q. That sounds right to me, so.

24 And if I say "Heller" or "the buyer,"  
25 you'll understand that I'm referring to Heller

1 Capital who was the purchaser of, more or less, 5700  
2 kiosks?

3 A. Yes.

4 Q. And so you said there were machines that  
5 were not sold to Heller?

6 A. Yes.

7 Q. Do you know about how many weren't sold  
8 to Heller?

9 A. I don't know the number off the top of  
10 my head, but the balance of what the company started  
11 with, after you subtract the 5700, so roughly the  
12 amount either in Brazil or that were abandoned or  
13 surrendered.

14 Q. Can you go to Tab 13 in your binder  
15 which I'll mark as -- I'm sorry, I lied. Actually,  
16 you know what, just to make it easy, because it's  
17 already pre-marked, can you open up the Excel file  
18 labeled 30.

19 And I'm going to mark that -- that's  
20 Tab 30 in the binder and I'm going to mark that as  
21 Exhibit 31.

22 (Exhibit 31 marked.)

23 BY MR. KISSNER:

24 Q. And then could you turn to Tab 13 in  
25 your binder, and we'll mark that as Exhibit 32.

1 (Exhibit 32 marked.)

2 BY MR. KISSNER:

3 Q. Okay. Great.

4 A. I think this is the privileged one. No,  
5 this was, I think, produced to --

6 Q. This was produced to us.

7 A. Yeah, just -- I think -- yeah, this is  
8 fine.

9 MR. MANN: Yeah, this is what he  
10 received.

11 BY MR. KISSNER:

12 Q. So Exhibit 32, which is the physical, in  
13 the binder --

14 A. Tab 13.

15 Q. -- Tab 13, can you just -- do you  
16 recognize this document?

17 A. Yes.

18 Q. Can you describe to me what it is?

19 A. This is a immediate use of liquidity  
20 analysis. It's preliminary, subject to negotiations  
21 under FRE 408, and it shows immediate use of nonsale  
22 proceeds and a proposal of adjustments to sale  
23 proceeds, for review, I believe, by -- I don't know  
24 if this version went to Enigma and Genesis or the  
25 committee. I believe all of them at once.

1 Q. Okay. Did you prepare this document?

2 A. I prepared this document with feedback  
3 from both Province and counsel.

4 Q. And when you say "counsel," that refers  
5 to whom?

6 A. The debtor's counsel.

7 Q. The debtor's counsel.

8 And do you know when this was prepared?

9 A. I don't know the exact date.

10 Q. Could we turn back to Tab 1, Exhibit 1,  
11 which is the notice of deposition.

12 A. Sure.

13 Q. And if we could go to topic 10(c).

14 A. Yes.

15 Q. Can you -- you see that topic 10(c)  
16 talks about a sale proceeds analysis?

17 A. Yes, dated July 26, 2023.

18 Q. And is Tab 13, Exhibit 32, is that the  
19 sale proceeds analysis referred to in the notice of  
20 deposition?

21 A. Yes, I believe so.

22 Q. Okay. And reading your notice of  
23 deposition, does that refresh your recollection as  
24 to when Exhibit 32 was created?

25 A. Yes. And I believe there was also



1 corresponding Excel file requested by AV Tech that  
2 was sent that detailed the costs.

3 Q. Is everything in Exhibit 32 true and  
4 accurate, to the best of your knowledge?

5 A. Certainly at the time, to the best of my  
6 knowledge. I'm sure there are estimates and amounts  
7 to be negotiated in this document, along with  
8 further reconciliation of the number of kiosks.

9 Q. Okay. Fair.

10 So let's turn back to the Excel, which  
11 is Exhibit 31.

12 A. Okay.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. This looks like a working draft of the  
17 preliminary sale analysis, a prior iteration of  
18 either this or what ultimately became the 506(c)  
19 surcharge or a variant of it.

20 Q. Said another way, is this an iteration  
21 of the model underlying Exhibit 32?

22 MR. MANN: Objection. Form.

23 THE WITNESS: You're referring to this  
24 document --

25 ///

1 BY MR. KISSNER:

2 Q. Tab 13.

3 A. -- Tab 13?

4 I believe this was a separate tab, to be  
5 more concise or descriptive, but this is likely a  
6 more recent iteration of this file that we're  
7 looking at on the screen.

8 Q. And Exhibit 31, which is what we have up  
9 on the screen, did you prepare it?

10 A. Yes, with feedback from, I believe,  
11 Province, debtor counsel, and maybe that was it at  
12 the time.

13 Q. Subsequently, did you receive feedback  
14 from other parties, other than Province and debtor's  
15 counsel, on Exhibit 31?

16 A. I don't recall. Do you have something  
17 more specific?

18 Q. I don't.

19 A. Okay.

20 Q. Do you know when Exhibit 31 was  
21 prepared?

22 A. I don't, off the top of my head.

23 Q. Okay. Is everything in this model true  
24 and accurate, to the best of your knowledge?

25 MR. MANN: Objection. Form.

1 THE WITNESS: I believe this model,  
2 similar to the forecast we discussed earlier, has a  
3 variety of assumptions in it that would need to be  
4 adjusted, and contains certainly several estimates.

5 BY MR. KISSNER:

6 Q. Do you think those assumptions were  
7 reasonable at the time that they were made?

8 A. I believe that this is a working  
9 draft so the -- maybe the standards for "reasonable"  
10 are different. But it was -- if it was sent  
11 externally, it wasn't completely arbitrary.

12 Q. Okay. Is there anything that you'd --  
13 strike that.

14 Is there anything that you would change  
15 about this model if you were to prepare it today?

16 A. I'm sure that there are a variety of  
17 differences between this and where the secured  
18 lenders and the debtor currently are with their  
19 negotiations, and I don't feel comfortable going  
20 through all of them, but there's certainly several.

21 Q. Now, before, you said certain collateral  
22 was abandoned by the debtor to secured lenders  
23 throughout the case?

24 A. Yes.

25 Q. Was any collateral abandoned to Enigma?

1           A.           Presumably, if they encumbered machines  
2           that were abandoned, which I believe they did.

3           Q.           Do you recall how many machines that  
4           constituted Enigma's collateral that were abandoned  
5           throughout the case?

6           A.           Sorry, can you repeat your question.

7           Q.           Sure. Do you recall how many of the  
8           machines pledged as Enigma's collateral were  
9           abandoned to Enigma throughout the case?

10          A.           I believe we know how many there were  
11          associated with Enigma LIDs. I'm not sure that  
12          there has been agreement on how many kiosks Enigma  
13          encumbered that were rejected or abandoned.

14          Q.           Could we go to Tab 14, which is the  
15          other Excel. And it was exhibit -- oh, I apologize,  
16          not Tab 14 -- yeah, Tab 29. I apologize. Could we  
17          go to Tab 29, which was Exhibit 7. It's the other  
18          spreadsheet. I apologize for that.

19                       And if you could, go to cell I-3. Does  
20          that refresh your recollection of how many machines  
21          pledged to Enigma were abandoned throughout the  
22          case?

23          A.           I don't believe that the LIDs are an  
24          indicator of whether or not a machine was pledged.  
25          But I believe that, at the time of this sheet that

1 we're looking at, that was the count of LIDs that  
2 also appeared in the UCC -- Enigma's UCC filing.

3 Q. And there were 537 of those?

4 A. That's what this analysis says, yes.

5 Q. And those were abandoned during the  
6 case, correct?

7 MR. MANN: Objection. Form.

8 THE WITNESS: Those were LIDs associated  
9 with leases that were rejected by the debtor, and  
10 presumably also abandoned, if Enigma did not -- or  
11 Genesis did not collect them.

12 BY MR. KISSNER:

13 Q. Okay. Could we go back to Tab 30, which  
14 is Exhibit 31 and it's the other Excel spreadsheet.  
15 Could you go over to the worksheet entitled  
16 "Rejected Machines."

17 A. Sure.

18 Q. And you said that you prepared this  
19 Excel worksheet, right?

20 A. Yes, likely with feedback from Province  
21 and counsel. I don't remember the specific  
22 circumstances, though.

23 Q. So would it be fair to say that you're  
24 competent at using Microsoft Excel?

25 A. Of course.

1 Q. Are there any hidden columns in the  
2 rejected machines worksheet?

3 A. Yeah, it looks like it.

4 Q. Could you unhide all the columns?

5 A. Sure. Okay.

6 Q. And do you see column F?

7 A. Yes.

8 Q. Can you go down to F-6?

9 A. Yes.

10 Q. Can you read me what that says?

11 A. 512.

12 Q. What do you understand that number to  
13 represent?

14 A. It appears that this is a count of the  
15 number of serial numbers that were likely tied to  
16 LIDs rejected by the debtor, per the debtor's  
17 records.

18 Q. So do you understand this to mean that,  
19 identified by serial number, approximately 512  
20 machines pledged to Enigma were abandoned during the  
21 case?

22 A. Yes, assuming that the debtor's books  
23 and records are correct.

24 Q. Okay. That's fair.

25 Can you go back, staying in the same

1 workbook, to the worksheet entitled "Sale Analysis"  
2 in red?

3 A. Sure.

4 Q. Okay. Now, does anything on this sheet  
5 reflect that certain machines are subject to a  
6 security interest in Enigma's favor?

7 A. Yes, though subject to change and  
8 further reconciliation, the distribution of the  
9 machines by bid allocation buckets attempt to  
10 connect serial numbers that appear in each lender's  
11 collateral documents and attempts to count them.

12 Q. Sure. That's fair.

13 But this does reflect a number of  
14 machines that is being pledged to Enigma, right?

15 A. Yes.

16 Q. And what's that number?

17 A. 2,368 total.

18 Q. And let's set aside the question of  
19 surcharge. But would it be fair to say that, to the  
20 extent that Enigma has a security interest in a  
21 given machine, it would be entitled to receive the  
22 proceeds from the sale of that machine?

23 A. Yes. If counsel or the courts agree  
24 that it's a legitimate means of identifying  
25 collateral, then yes.

1 Q. Certainly.

2 But that's sort of the gist of this  
3 document, right, that certain machines -- certain  
4 lenders have interests in certain machines and so  
5 there's an allocation of the related sale proceeds?

6 A. I don't believe that I would  
7 characterize it as the "gist" of the document. I  
8 believe I would characterize it as an illustrative  
9 allocation, hoping to give the secured parties an  
10 idea of where they stand, but otherwise primarily  
11 focuses on potential adjustments to sale proceeds  
12 since that's where the analysis ultimately ends.

13 Q. Okay. Albeit illustrative, though, this  
14 would suggest that sale proceeds would be allocated  
15 to Enigma based off of 22,368 machines being in its  
16 collateral package, correct?

17 MR. MANN: Object to form.

18 THE WITNESS: If that's what was  
19 ultimately determined as correct and ordered by the  
20 court, yes, but it appears that there are ongoing  
21 disputes about those numbers.

22 BY MR. KISSNER:

23 Q. Now, previously we discussed that under  
24 the UCC filing and the security agreement there were  
25 3,677 machines that were identified, accurately or



1 not, as Enigma's collateral, correct?

2 MR. MANN: Objection. Form.

3 THE WITNESS: Sorry, can you repeat your  
4 question.

5 MR. KISSNER: Could you read that back.

6 (The record is read by the reporter.)

7 BY MR. KISSNER:

8 Q. Yeah. I don't like that question  
9 either. We can strike that.

10 Before, we discussed that Enigma's UCC  
11 filing and related security agreement identified  
12 3,677 machines as constituting Enigma's collateral,  
13 correct?

14 MR. MANN: Objection. Form.

15 THE WITNESS: I believe we discussed  
16 that the UCC filing put forward a total number and a  
17 schedule of Enigma's asserted collateral with  
18 various identifiers, some of which have come into  
19 question as whether or not they're a practical means  
20 of identifying collateral.

21 BY MR. KISSNER:

22 Q. And we discussed that, again, whether or  
23 not -- setting aside whether it's the best means of  
24 doing so, we discussed that it appears the UCC  
25 filing and the security agreement identify machines

1 by using location ID, correct?

2 MR. MANN: Objection. Form.

3 THE WITNESS: The UCC filing, I believe,  
4 put forward a total number based on unique CCIDs.

5 BY MR. KISSNER:

6 Q. Yeah, that's correct. I'm sorry. I  
7 misspoke. So, okay, that's fair.

8 And if we were to use LIDs as the  
9 relevant metric, do you recall about how many  
10 machines would have been in Enigma's collateral  
11 package?

12 MR. MANN: Objection. Form.

13 THE WITNESS: I do not.

14 BY MR. KISSNER:

15 Q. We can go to Tab 7, which is the other  
16 Excel -- or Exhibit 7, which is the other Excel. Go  
17 to cell I-4. Can you read that number?

18 A. 3,303.

19 Q. Does that refresh your recollection as  
20 to, if LID were to be used as the identifier, how  
21 many machines would be in Enigma's collateral  
22 package?

23 A. Yes, assuming the debtor's books and  
24 records were accurate.

25 Q. And how many machines would that be?

1 A. Sorry, I don't understand your question.

2 Q. Well, so I asked you to read I-4, which  
3 was how much?

4 A. 3,303.

5 Q. Okay. So does that number refresh your  
6 recollection as to how many machines were in  
7 Enigma's collateral package, assuming that LID was  
8 the correct identifier?

9 A. Yes, I believe it would indicate 3,303  
10 LIDs were also in Enigma's UCC filing. And to  
11 refresh, LIDs aren't tied specifically to a location  
12 or a lease.

13 Q. Right. I think, before, you said that  
14 the best manner of identifying collateral would be  
15 through serial numbers; is that correct?

16 A. Physically inventorying serial numbers.

17 Q. Okay. And so do you recall -- if serial  
18 numbers were deemed to be the correct identifier, do  
19 you recall how many machines would be in Enigma's  
20 collateral package?

21 A. This analysis says 3,092 Enigma serial  
22 numbers from its UCC filing were also in the  
23 debtor's books and records.

24 Q. Okay. Let's stay in Exhibit 31, which  
25 is the live model Excel spreadsheet that you have

1 open.

2 A. Okay.

3 Q. Can you go to the worksheet called  
4 "Warehouse Machines"?

5 A. Sure.

6 Q. And can you unhide any hidden columns?

7 A. Yes.

8 Q. And can you clear any filters?

9 A. Okay.

10 Q. And can you read cell I-6 for me?

11 A. Sure. 717.

12 Q. And what does that number represent?

13 A. That appears to be a count of the number  
14 of machines with serial numbers that also match a  
15 serial number from Enigma's UCC filing, that the  
16 debtor's records at the time showed were in  
17 warehouses.

18 Q. So that's what the sale analysis bases  
19 its assumption, that 717 warehouse machines are  
20 Enigma's, comes from; is that correct?

21 A. This preliminary sale analysis, that's  
22 subject to material change, allocated these costs  
23 based on that, but as it says, subject to change  
24 upon further reconciliation.

25 Q. All right. I just want to make sure I

1 have everything. Okay. This number 717 -- strike  
2 that.

3 Do you recall, before, saying that  
4 certain of the debtor's machines don't have serial  
5 numbers?

6 A. I remember discussing the conversations  
7 that I had with debtor employees about how certain  
8 machines don't have serial numbers.

9 Q. But is it your understanding that  
10 certain of the debtor's machines don't have serial  
11 numbers?

12 A. Yes.

13 Q. So this method of identifying machines,  
14 this wouldn't capture any machines without serial  
15 numbers, correct?

16 A. Serial numbers are the best way of  
17 identifying a unique machine, particularly if a  
18 creditor has a specific interest in a unique  
19 machine.

20 Q. But if a machine doesn't have a serial  
21 number, what then?

22 MR. MANN: Objection. Form.

23 THE WITNESS: I believe that's a  
24 question for counsel. But in this particular  
25 analysis, it would be assumed to fall under

1 Genesis's blanket lien.

2 BY MR. KISSNER:

3 Q. Is that assumption based off of the  
4 instruction of counsel?

5 MR. MANN: Objection. Form.

6 THE WITNESS: Yes.

7 BY MR. KISSNER:

8 Q. Setting aside what counsel says, if you  
9 were to attempt to identify a machine without a  
10 serial number, what method would you use?

11 MR. MANN: Objection to form.

12 THE WITNESS: Can you specify? Do you  
13 mean identify it as a unique machine?

14 BY MR. KISSNER:

15 Q. Sure.

16 A. I'd hesitate to recommend using the  
17 other identifiers.

18 Q. Okay.

19 A. The CCID can change any time the  
20 machine's computer's replaced or reprogrammed or  
21 updated, and the LID doesn't follow a machine if  
22 it's moved from one location to another.

23 Q. Can we go to the worksheet entitled  
24 "Field Machines"?

25 A. Yes.

1 Q. And can we unhide any hidden columns?

2 A. Yes.

3 Q. And can you clear any filters. I don't  
4 think there are any, but.

5 A. Okay.

6 Q. And can you go to cell I-6?

7 A. Okay.

8 Q. Can you read what it says?

9 A. 1,651.

10 Q. What do you understand that number to  
11 represent?

12 A. The number of serial numbers the  
13 debtor's books and records said were in the field  
14 that also matched a serial number from Enigma's UCC  
15 filing.

16 Q. And so was this -- strike that.

17 The sale analysis, its assumption --  
18 strike that as well.

19 The sale analysis, which assumes that  
20 1,651 warehouse machines are Enigma's, it bases that  
21 assumption off of this worksheet; is that correct?

22 A. The sale analysis in this Excel file,  
23 yes, I believe so. Let me confirm.

24 Yes, 1,651.

25 Q. But this number, it wouldn't reflect any

1 machines that don't have serial numbers, correct?

2 A. Correct, at least to my knowledge.

3 Q. And then can we go over to the worksheet  
4 entitled "Loss and Decom Machines"?

5 A. Sure.

6 Q. And I'll ask you to unhide all columns  
7 and clear any filters.

8 A. Okay.

9 Q. So column F that says "Enigma" at the  
10 top, do you see that?

11 A. Yes.

12 Q. What does that represent?

13 A. It appears to be a column that notes any  
14 serial number in the debtor's books and records that  
15 also match an Enigma serial number from its UCC  
16 filing, that the debtor's books and records had  
17 indicated in some way was either a loss or decom  
18 machine through the reconciliation process.

19 Q. When you say "decom," what does that  
20 mean?

21 A. Decommissioned.

22 Q. So would it be fair to say that the  
23 serial numbers listed in this column are machines  
24 that constituted Enigma's collateral that have  
25 either been lost, stolen or decommissioned?



1 A. Assuming the books and records are  
2 correct, yes.

3 Q. And can you run a count of how many  
4 Enigma serial numbers are identified in column F?

5 A. Right now?

6 Q. Sure.

7 A. Happy to.

8 May be not perfect, but it appears --

9 Q. 57?

10 A. At least 57.

11 Q. So would this suggest that 57 machines  
12 that constituted Enigma's collateral were either  
13 lost, stolen or decommissioned?

14 MR. MANN: Objection. Form.

15 THE WITNESS: At the time of this  
16 analysis, yes, that's what the books and records had  
17 reflected.

18 BY MR. KISSNER:

19 Q. And if you scroll over to column P  
20 entitled "Status," let me know when you're there.

21 A. Okay.

22 Q. What does this column represent?

23 A. Generally speaking, I can see that there  
24 are descriptors of decommissioned, lost, stolen or  
25 blank, in the column.

1 Q. Can you tell me to use this to -- strike  
2 that.

3 Based off of this can you tell me how  
4 many Enigma machines were decommissioned?

5 A. I would not rely on this column solely  
6 as the way to identify those machines.

7 Q. Why not?

8 A. The debtor's books and records were  
9 certainly complicated and not always consistent in  
10 where this information could be found.

11 Q. Do you think the -- okay.

12 Well, why don't we filter column P to  
13 only return decommissioned machines.

14 A. Okay.

15 Q. How many come up for Enigma?

16 A. It looks like roughly 53.

17 Q. But you said you wouldn't rely on that  
18 number?

19 A. I would want to check it with other  
20 sources before I went forward with asserting that  
21 that was the final number.

22 Q. Do you think the final number is higher  
23 or lower than 53?

24 A. I don't -- I believe it's higher, based  
25 on the 57 in this sheet, but I don't have any reason

1 to believe that it's different from that without  
2 referring back to the source materials.

3 Q. And what does "decommissioned" mean in  
4 this context?

5 A. My understanding is that those machines  
6 were taken out of the field for any number of  
7 reasons, including being no longer functional,  
8 vandalized in some way, or potentially at the end of  
9 its useful life.

10 Q. Were any of the decommissioned machines  
11 sold to Heller?

12 A. I'd want to review the APA with counsel.  
13 I believe that Heller purchased the contents of the  
14 warehouses, and if parts of machines were stripped  
15 or parted out and in those warehouses, I'd want  
16 counsel to validate whether or not those were  
17 included in the sale. But I don't know the answer  
18 to that.

19 Q. Do you know if decommissioned machines  
20 were included in your surcharge analysis?

21 A. No, they were not. I don't believe they  
22 were, as these are no longer functional machines, to  
23 my understanding.

24 Q. Were the decommissioned machines --  
25 strike that.

1                   You just testified that certain of the  
2       decommissioned machines are in warehouses; is that  
3       correct?

4           A.       Potentially, parts of them could be. I  
5       don't know the state of the decommissioned machines,  
6       other than they're no longer reflected as an asset  
7       on the debtor's books and records.

8           Q.       Would they be stored in the same  
9       warehouses as other machines?

10          A.       I'm not sure of that.

11          Q.       Did you ever make an attempt to  
12       differentiate between costs incurred in storing  
13       decommissioned machines versus costs incurred in  
14       storing warehoused machines?

15          A.       No.

16          Q.       Going back to column P, can we filter  
17       for loss now?

18          A.       Maybe I'm missing something, but I don't  
19       see any -- oh, that's why. Okay.

20          Q.       It shows one machine, right?

21          A.       Yes.

22          Q.       Do you understand that to mean that the  
23       debtor lost one machine, constituting Enigma's  
24       collateral, during the case?

25          A.       I would specify that "loss" doesn't

1 necessarily mean they don't know where it is.

2 Rather, it might have been part of a loss event such  
3 as a theft or a robbery.

4 Q. Can we filter for "stolen," then, in  
5 column P?

6 A. Sure.

7 Q. And there's three machines listed; is  
8 that right?

9 A. I see three, yes.

10 Q. So would you take that to mean that, in  
11 total, four machines were either lost or stolen that  
12 constituted Enigma's collateral?

13 A. According to the records that we had,  
14 yes.

15 Q. But you think these records might not be  
16 accurate?

17 A. I certainly have reservations and  
18 concerns about them.

19 Q. Do you think that the true number of  
20 lost and stolen machines, constituting Enigma's  
21 collateral, is higher or lower than four?

22 A. I don't know that I have a particular  
23 reason to believe that number is in either  
24 direction, unless there's something you can point me  
25 to.

1 Q. Okay. Fair enough.

2 And do you know if the four lost or  
3 stolen machines were incorporated in the surcharge  
4 analysis?

5 A. I don't believe so. I don't believe  
6 that the buyer ascribed a value to them. My  
7 understanding is purchase price adjustment was made  
8 because of those machines in particular; if that's  
9 what was being reflected here in those records,  
10 something similar.

11 Q. And let's just go back one last time to  
12 the topic of machines in Enigma's collateral  
13 package. Okay?

14 A. Okay.

15 Q. So previously, we discussed how,  
16 assuming LID is the correct identifier, there's  
17 approximately 3,677 machines subject to Enigma's  
18 liens?

19 A. I believe --

20 MR. MANN: Object.

21 THE WITNESS: -- it was CCIDs.

22 BY MR. KISSNER:

23 Q. Sorry. You're right. I keep doing that  
24 and I apologize to you.

25 So we discussed previously that about

1 3,303 machines would be identified as Enigma's  
2 collateral, assuming location ID is accurate?

3 A. Yes, but it would not be in my  
4 assumption that location ID is an appropriate way of  
5 identifying collateral.

6 Q. That's fair.

7 And then assuming that CCID is an  
8 appropriate means of identifying collateral, we  
9 discussed how 3,676 machines -- or 3,677 machines  
10 would be identified as Enigma's collateral, correct?

11 A. If you were to use that as your  
12 assumption, yes, but I would not use that as my  
13 assumption.

14 Q. And we discussed how, depending on which  
15 identifier is used, somewhere between 500 and, say,  
16 550 or so of Enigma's machines were abandoned  
17 throughout the case. Do you recall that?

18 MR. MANN: Objection. Form.

19 THE WITNESS: I remember discussing the  
20 number of LIDs that appeared in Enigma's UCC filing  
21 that were also rejected, that the debtor's records  
22 indicated may be associated with some of Enigma's  
23 collateral.

24 BY MR. KISSNER:

25 Q. Okay. And that number, depending on

1 which identifier you use, would range somewhere  
2 between 500 and 550?

3 A. That sounds correct, based on what we've  
4 reviewed.

5 Q. Okay. So let's be -- we can be  
6 conservative, and let's just say it was 550 machines  
7 that were abandoned throughout the case. Is that  
8 okay?

9 A. Sure.

10 Q. Okay. So -- and let's use CCID. If  
11 there were 3,677 machines that were Enigma's, as of  
12 the petition date, and about 550 of them were  
13 abandoned throughout the case, about how many  
14 machines would be left to be sold to Heller?

15 MR. MANN: Objection. Form.

16 THE WITNESS: I don't know that I feel  
17 comfortable making assertions about that, given the  
18 complexity of this issue.

19 BY MR. KISSNER:

20 Q. Okay, but I mean whether or not an  
21 identifier's valid or the correct one to use, you'd  
22 agree that that's a legal conclusion, right?

23 A. I agree that there are legal decisions  
24 that need to be made with respect to what the  
25 appropriate identifier is and, additionally,



1 additional work that needs to be done to get the  
2 debtor's books and records up to the standard that  
3 the secured lenders are looking for.

4 Q. Right. But in your job, you're asked to  
5 make projections and forecasts and assumptions based  
6 off of legal input from counsel all the time, right?

7 MR. MANN: Objection. Form.

8 THE WITNESS: Yes.

9 BY MR. KISSNER:

10 Q. Okay. So for this exercise, can we just  
11 assume that location ID is the correct way to  
12 identify collateral?

13 MR. MANN: Objection. Form.

14 THE WITNESS: For the purpose of a  
15 thought experiment, yes, but that's not the  
16 assumption I would be using.

17 BY MR. KISSNER:

18 Q. Okay. I understand.

19 So if there are 3,677 machines at the  
20 beginning of the case that were identified as  
21 Enigma's collateral, correct --

22 A. Yes.

23 MR. MANN: Objection. Form.

24 BY MR. KISSNER:

25 Q. -- and then, conservatively, 550

1 machines were abandoned to Enigma throughout the  
2 case, correct --

3 A. If we're using the hypothetical numbers  
4 that we just discussed, yes.

5 Q. Okay. So then that would imply  
6 approximately 3,127 machines left, to be sold to  
7 Heller, that were Enigma's?

8 MR. MANN: Objection. Form.

9 THE WITNESS: If we're relying on the  
10 hypothetical assumptions that we just discussed and  
11 your math, yes.

12 BY MR. KISSNER:

13 Q. And so in your sales proceeds analysis,  
14 that's based off an assumption that only 2,368  
15 machines pledged to Enigma were sold, correct?

16 MR. MANN: Objection. Form.

17 THE WITNESS: I don't recall without  
18 looking back to it, but yes.

19 BY MR. KISSNER:

20 Q. Do you know the reason for the  
21 discrepancy between 3,127 and 2368?

22 A. It could be any number of things,  
23 including the lack of serial numbers for unique  
24 machines, discrepancies and omissions in the  
25 debtor's books and records, among other things that

1 we've done our best to iron out throughout this  
2 bankruptcy.

3 Q. Would you agree, though, that the bulk  
4 of the difference between those two numbers is based  
5 off of the fact that 2368 is based off of serial  
6 numbers and 3127 is based off of CCID?

7 A. If I recall, Enigma's UCC filing  
8 excluded serial numbers for somewhere around 500  
9 machines, and I'd assume that that is part of the  
10 discrepancy.

11 Q. Okay. Are you aware that the committee  
12 has filed a motion to challenge Enigma's liens?

13 A. I am familiar with that, at a high  
14 level, yes.

15 Q. Can you describe, in your own words,  
16 what the nature of that challenge is, if you know?

17 MR. MANN: Objection. Form.

18 THE WITNESS: I don't know, as it's, I  
19 believe, a work stream of the committee's and not  
20 the debtor's.

21 BY MR. KISSNER:

22 Q. Have you ever talked to the committee or  
23 its advisor about their challenge?

24 A. I've certainly given them information  
25 similar to that that Enigma has.

1 Q. What does that mean?

2 A. An explanation of what I've been told  
3 certain identifiers do, an Excel spread of the  
4 information we have to identify collateral, and some  
5 of the problems with reconciling the debtor's books  
6 and records may be among other details about how  
7 many machines are counted, depending on which  
8 identifier you use.

9 Q. Are you aware that one of the bases for  
10 the committee's challenge to Enigma's liens is that  
11 certain machines in Enigma's UCC filing do not have  
12 serial numbers?

13 MR. MANN: Objection. Form.

14 THE WITNESS: I'm familiar with the  
15 topic through this work, but I didn't participate in  
16 the development of whatever they've filed.

17 BY MR. KISSNER:

18 Q. That's fair.

19 But if I were to tell you that one of  
20 the primary bases for the committee's challenge is  
21 that the UCC filing of Enigma doesn't list serial  
22 numbers for approximately 500 machines, would you  
23 have reason to think that was incorrect?

24 MR. MANN: I'm going to object. I feel  
25 like this is going beyond the scope of the topics

1 that he was presented today. We're going into what  
2 the committee and their -- you know.

3 MR. KISSNER: I'm just asking his  
4 awareness of issues in the case, as they might have  
5 informed the surcharge analysis.

6 THE WITNESS: I believe the objective of  
7 the surcharge analysis is to identify the aggregate  
8 costs to be proposed to be surcharged, though we did  
9 provide preliminary estimates of how those costs  
10 would be allocated.

11 BY MR. KISSNER:

12 Q. I guess -- oh, sorry. Go ahead.

13 A. That's all.

14 Q. I guess what I'm getting at is that the  
15 sale proceeds analysis assumes that machines without  
16 serial numbers are not in Enigma's collateral  
17 package, correct?

18 MR. MANN: Objection. Form.

19 THE WITNESS: There is certainly a  
20 preliminary sale analysis that provides allocation  
21 of proceeds and costs that's subject to resolution  
22 of several disputes. But identifying machines by  
23 serial number, as a practical matter, was the  
24 easiest and best way, most reliable way to identify  
25 a unique machine with the records that we had.

1 BY MR. KISSNER:

2 Q. Okay. Would it be fair to say, then,  
3 that if the committee were to succeed in its  
4 challenge, that wouldn't really impact the sale  
5 proceeds analysis or the surcharge analysis?

6 MR. MANN: Objection. Form.

7 THE WITNESS: I believe unless there's  
8 agreement by the secured creditors on those  
9 allocations, it would not impact it; otherwise, the  
10 analysis is focused on the aggregate costs to be  
11 surcharged.

12 BY MR. KISSNER:

13 Q. Right.

14 I guess what I'm getting at is that the  
15 sale proceeds analysis proceeds from the assumption  
16 that 2,368 machines are Enigma's, correct?

17 A. That sounds right.

18 Q. And none of those machines are machines  
19 that lack serial numbers, correct?

20 MR. MANN: Objection. Form.

21 BY MR. KISSNER:

22 Q. Put another way, all of those machines  
23 have serial numbers, correct?

24 A. To clarify, you're talking about the  
25 2,368 machines in the preliminary sale analysis?

1 Q. Yep.

2 A. Yes. That would be the aggregate of a  
3 count of serial numbers that matched Enigma's UCC  
4 filing that were shown in the debtor's records for  
5 warehouse machines, and the same for machines in the  
6 field.

7 Q. And if the committee were successful in  
8 challenging Enigma's liens on machines that lack  
9 serial numbers, would that result in any additional  
10 proceeds being available for the estate?

11 MR. MANN: Objection to form.

12 THE WITNESS: My understanding -- though  
13 I'm not a lawyer and would defer to them -- is that  
14 "made available to the estate" implies that it would  
15 go to the administrative claims, but I believe it  
16 would go to Genesis under its blanket lien. Though,  
17 again, I would defer to the lawyers.

18 MR. KISSNER: Maybe we can turn it over  
19 to you, Rob, while I look, but I'm hopeful that that  
20 should be it for me.

21 (A discussion is held off the record.)

22 (Exhibit 33 through 35 marked.)

23 EXAMINATION

24 BY MR. KINAS:

25 Q. Good afternoon, Mr. James. My name is

1 Robert Kinas, K-I-N-A-S. I'm with Snell & Wilmer  
2 and we represent Genesis. I just have a couple of  
3 quick questions.

4 First, I wanted to just show you the  
5 three exhibits which are three different notices of  
6 depositions. One's the 30(b)(6) of Province, one is  
7 the deposition of you personally, and one is the  
8 deposition for 30(b)(6) for Cash Cloud.

9 (A discussion is held off the record.)

10 MR. KINAS: And those are exhibits --  
11 what are the numbers on those?

12 THE REPORTER: 33 to 35.

13 MR. KINAS: Excellent.

14 BY MR. KINAS:

15 Q. So I just want to ask whether you've  
16 seen those before?

17 A. Yes.

18 Q. Perfect.

19 And then we have -- with agreement with  
20 Enigma's counsel, we've agreed to ask our questions  
21 in conjunction with this, just for efficiency's  
22 sake.

23 A. Thank you.

24 Q. So in the binder, I'm going to be asking  
25 you a couple of questions about Tab 3. I believe



1 it's Exhibit 2, it's your declaration. And then I  
2 will also be asking you a few questions about the  
3 surcharge motion that the debtor filed, which you've  
4 been handed as Exhibit 36.

5 (Exhibit 36 marked.)

6 BY MR. KINAS:

7 Q. So as part of your declaration, which is  
8 Tab 3, Exhibit 2, if you could turn to page 4. Let  
9 me know when you are there.

10 A. Okay. I'm there.

11 Q. So on page 4, paragraph 9, you mentioned  
12 that you received certain fee statements or e-mails  
13 from -- let's just go through them one by one --  
14 from the debtor's counsel for Fox Rothschild.

15 Did they simply provide you an e-mail  
16 with the amount of fees and costs associated with  
17 the sale process?

18 MR. MANN: Objection to form.

19 THE WITNESS: I believe Fox Rothschild  
20 was a combination of the fee statements and  
21 discussions orally with representatives of the  
22 debtor's counsel.

23 BY MR. KINAS:

24 Q. And did either you or members of  
25 Province independently review those fee statements

1 that related to the sale process?

2 A. Not in their entirety.

3 Q. Would it be true that you accepted the  
4 Fox Rothschild representation of fees and costs  
5 related to the sale process?

6 A. I believe a majority of them had already  
7 received certificate of no objections, so therefore,  
8 yes.

9 Q. And then as to committee counsel, your  
10 earlier testimony was that you received an e-mail  
11 from committee counsel that set forth the fees and  
12 costs associated with the sale process; is that  
13 correct?

14 A. Yes.

15 Q. And did you or any member of Province  
16 independently review the fee statements to determine  
17 the accuracy of that amount?

18 A. We did not review Seward & Kissel's fee  
19 statements in full.

20 Q. And then as to FTI, the financial  
21 advisor for the committee, you received an e-mail  
22 from Michael Tucker that set forth the fees and  
23 costs related to the sale process; is that true?

24 A. Yes, we received an e-mail from FTI.

25 Q. And did you or anyone at Province

1 independently review the FTI backup statements to  
2 determine whether that was an accurate number?

3 A. I don't believe they were made available  
4 to us, so no.

5 Q. So now, if you would turn your attention  
6 to -- Exhibit 36 is the surcharge motion; is that  
7 correct? Do you have a copy of that in front of  
8 you, Exhibit 36?

9 A. Yes.

10 Q. On top of that, it would be  
11 Document 926, just to make sure we're looking at the  
12 same document?

13 A. Yes.

14 Q. So have you seen the -- we'll just call  
15 this "the surcharge motion." Does that work for  
16 you?

17 A. Yes.

18 Q. So have you seen this surcharge motion  
19 before?

20 A. Yes.

21 Q. And have you read it?

22 A. Though I'm not a lawyer, yes, I've  
23 reviewed it.

24 Q. If you could turn to page 6 and read  
25 line 19 to 21 by yourself and let me know when

1       you're done.

2           A.        You said 19 to 21?

3           Q.        Yep, lines 19 to 21. Let me know when  
4       you're done.

5           A.        "As part" --

6           Q.        You don't have to read it out loud.  
7       Just read it to yourself and let me know. Thank  
8       you.

9           A.        Okay.

10          Q.        And so according to the representations  
11       in the surcharge motion, Province was involved and  
12       consulted with the debtor about the sale of the  
13       assets at the auction; is that correct?

14          A.        I don't believe I'm the appropriate  
15       person to discuss these topics.

16          Q.        Are you generally aware, was Province  
17       involved in the sale process?

18          A.        Yes.

19          Q.        Okay. If you turn to page 7 and if you  
20       read lines 3 and 4, let me -- to yourself. Just let  
21       me know when you finish reading those.

22          A.        Okay.

23          Q.        And as you sit here today, are you aware  
24       that the debtor filed a motion to approve the sale  
25       results on or about June 19, 2023? Are you aware?

1           A.           I don't believe I'm the appropriate  
2           person to discuss these.

3           Q.           Are you aware of those facts,  
4           personally?

5           A.           I'm aware that the debtor filed a sale  
6           motion that was approved. Other than reviewing this  
7           document in front of me, would not have known the  
8           dates.

9           Q.           Okay. Same page, if you could review  
10          page 7, lines 16 -- or 16 through 18 and let me know  
11          when you're done.

12          A.           Okay.

13          Q.           So in the surcharge motion -- again, at  
14          page 7, line 16 -- "The debtor states that the sale  
15          resulted in substantially less value to the estate  
16          than the parties anticipated."

17                      Do you see that sentence?

18          A.           Yes.

19          Q.           And in your role as vice president of  
20          Province, are you aware of -- what was the range of  
21          possible sale prices that the -- that Province  
22          thought possible before the auction process started?

23          A.           I would defer to the principal who led  
24          the sale process on this.

25          Q.           And who is that?

1 A. Daniel Moses.

2 Q. Same page, at page 7, lines 21 to 23, if  
3 you could review those and let me know when you're  
4 done.

5 A. Okay.

6 Q. Do you see there where -- "In the  
7 debtor's surcharge motion, the debtor represents  
8 that while the debtor anticipated other potential  
9 sources of recovery, the sales collectively  
10 generated much less than the estimated secured  
11 debt."

12 Do you see that?

13 A. Yes.

14 Q. And as you were -- you've been involved  
15 in the representing -- you've been involved in  
16 representing the debtor since you were employed  
17 officially by the bankruptcy court, correct?

18 A. Yes.

19 Q. And you were -- so at the time that the  
20 debtor was considering marketing the assets, were  
21 you aware that the debtor hoped that the sale would  
22 result in proceeds greater than the amount owing to  
23 secured creditors?

24 A. I believe that Daniel Moses is the  
25 correct party to answer these questions. But I know

1 that at the very least, the former CEO anticipated  
2 significant proceeds.

3 Q. You have been discussing today various  
4 sale proceeds analysis and reports that you have  
5 prepared.

6 During the time you have been working on  
7 this case, the Cash Cloud case, for Province, have  
8 you prepared any spreadsheets or worksheets that  
9 anticipated a sale of the assets for greater than  
10 the amount of the secured debt?

11 A. I don't recall if I've produced anything  
12 of that particular nature.

13 Is there something in particular you can  
14 point me to?

15 Q. Not at this time.

16 If you could turn to page 10 of the  
17 surcharge motion. Let me know when you're there.

18 A. Okay.

19 Q. If you could read the first four lines,  
20 1 through 4, to yourself and let me know when you're  
21 done.

22 A. Okay.

23 Q. So starting at line 2, "The debtor, in  
24 its surcharge motion states, first, under the  
25 beneficial test, a debtor must prove that its

1 expenses were reasonable, necessary and provided a  
2 quantifiable benefit to the secured creditor."

3 Do you see that?

4 A. Yes.

5 Q. So as part of your analysis, did the  
6 debtor specifically engage you to do an analysis  
7 evaluating whether the fees and costs of the  
8 professionals provided a quantifiable benefit to the  
9 secured creditors?

10 MR. MANN: Objection to form.

11 BY MR. KINAS:

12 Q. You can answer.

13 A. Can you please restate your question.

14 Q. My question is, did you -- in your  
15 capacity as vice president of Province, were you  
16 requested by the debtor to prepare an analysis that  
17 looks at whether the fees and expenses of the  
18 professionals provided a quantifiable benefit to the  
19 secured creditor?

20 MR. MANN: Same, objection to form.

21 BY MR. KINAS:

22 Q. And you can still answer.

23 A. Yeah, I believe these were conversations  
24 with counsel --

25 Q. But there --



1 A. -- of the debtor.

2 Q. But there is no -- there's no written  
3 analysis of that; is that correct?

4 A. Not an independent written analysis, no.

5 Q. So if you could go to now your  
6 declaration, which is Tab 3, Exhibit 2, and let me  
7 know when you are there.

8 A. Okay.

9 Q. So if you could turn to Exhibit A, which  
10 is pages 8 of 11 and 9 of 11. Let me know when you  
11 are there.

12 A. Sorry, which pages?

13 Q. So this is Exhibit A, but if you look on  
14 the top, it is labeled page 8 of 11 and page 9 of  
15 11.

16 A. Okay. I'm there.

17 Q. So for the purposes of your declaration  
18 and for -- on page 8, for the purposes of the  
19 preliminary sale analysis, the preliminary sale  
20 analysis is where you determined the total number of  
21 machines, and then you determined how many were  
22 collateral for Enigma, Genesis and AV Tech; is that  
23 correct?

24 A. We put forth the debtor's best books and  
25 reflection of who encumbered what collateral, based

1 on their books and records, though that was not the  
2 primary focus of the analysis.

3 Q. But on that -- as it relates to the  
4 preliminary sale analysis, on page 8 of 11 on  
5 Exhibit 2, at the end of the day, you concluded that  
6 there were, for the purposes of your declaration,  
7 5,706 machines; is that correct?

8 A. Yes.

9 Q. And as it relates to Genesis, you  
10 concluded that, if you look at the machines in the  
11 warehouse and in the field, Genesis -- Genesis's  
12 collateral totaled 2,855 machines; is that correct?

13 A. Yes, but that all amounts are estimates  
14 and not guarantees of actual results on further  
15 reconciliation.

16 Q. But for the purpose of what you filed  
17 with the court as your declaration, that is what you  
18 chose to use on that specific day, correct?

19 A. Yes.

20 Q. Okay. So now let's turn to the next  
21 page, same exhibit, page 9 of 10, still of  
22 Exhibit 2. Let me know when you're on page 9.

23 A. Page 9 of 11?

24 Q. Yes.

25 A. Yes, I'm there.

1 Q. So at the very end of that, you have  
2 total adjustments to proceeds of the -- you have  
3 2,098,214. Do you see that number?

4 A. Yes.

5 Q. All right. So let's start at the very  
6 top where you have "adjustments to lender proceeds  
7 from warehouse costs." Do you see that?

8 A. Yes.

9 Q. And the total -- the subtotal for that  
10 category was 518,000, correct?

11 A. Yes, with the caveat of footnote 1.

12 Q. Yes. All right. But for this purpose,  
13 we'll -- the number you chose to use there was  
14 518,000, correct?

15 A. Yes.

16 Q. And the way you allocated cost was  
17 basically applying math, correct; you took -- you  
18 used the total number of machines that were Genesis  
19 collateral in a ratio of -- to 5,706 machines and  
20 came up with a certain percentage, correct?

21 A. Correct, the charges to each secured  
22 creditor for cost of storage are allocated as a  
23 percentage of the total units in storage multiplied  
24 by the total storage cost.

25 Q. Got it.

1                   So you just used that mathematical  
2     formula as it related to total warehouse costs,  
3     correct?

4           A.       Correct, for this analysis.

5           Q.       For what you put before the court in  
6     your declaration, correct?

7           A.       Yes.

8           Q.       And then second, on page 9 of 11, the  
9     category that says "Sale Related Costs," do you see  
10    that?

11          A.       Yes.

12          Q.       And the adjustment subtotal -- although  
13    it could grow -- for the purposes of your  
14    declaration you used \$1,580,214. Do you see that?

15          A.       Yes, subject to footnote 2.

16          Q.       Correct.

17                   And again as part of your analysis, you  
18    simply applied the same mathematical formula that  
19    you did -- as it relates to warehouse, as to the  
20    costs allocated to Genesis; is that correct?

21          A.       No.

22          Q.       You didn't use the same -- you didn't  
23    use the same ratio of -- if it was -- if we do the  
24    math and Genesis has machines of -- has 2,855  
25    machines out of the total of 5,706 -- let me check.

1 I think that's 50 percent, but let's do the math.

2 All right. If you believe my  
3 calculator, the percentage of units attributable to  
4 Genesis in your declaration, at page 8, is  
5 50.03 percent.

6 So if you take me at my word at that, is  
7 that the percentage you used on page 9 of 11 to  
8 allocate cost to Genesis of the 518,000?

9 A. The warehouse costs were allocated based  
10 on the percentage of the particular warehouse  
11 machines, not of the total machines sold. The  
12 sale-related costs, which include professional fees,  
13 were allocated based on the total number of machines  
14 sold, not just the amount of machines in warehouses.

15 Q. Understood.

16 So in the second category, sale-related  
17 costs, of the \$1,580,214, you used the -- you  
18 basically allocated 50 percent of that to Genesis;  
19 is that correct?

20 A. The \$1,580,214 would have been allocated  
21 to the secured creditors based on the total number  
22 of machines, whereas the warehouses would have been  
23 allocated based on the total number of machines in  
24 the warehouses. Said more simply, if one of these  
25 creditors did not have any machines in a warehouse,

1 they would not be surcharged for warehouse costs.

2 Q. So if you run the math and you do  
3 50.03 percent of \$1,580,214, you get 790,661. And  
4 for -- as it relates to Genesis, is the number on  
5 your report 790,661?

6 A. Yes.

7 Q. So you just -- when allocating the  
8 costs, although you used different mathematical  
9 formulas, you used the math related to the number of  
10 units that you thought were collateral for the  
11 lenders?

12 A. Correct, according to the debtor's books  
13 and records.

14 MR. KINAS: Okay. That's all I've got.

15 MR. KISSNER: Jim, do we have anything  
16 else?

17 MR. SHEA: No.

18 MR. MANN: Mason Higgins, do you have  
19 anything else to add?

20 MR. HIGGINS: I don't have anything to  
21 ask him.

22 MR. KISSNER: Off the record.

23 (A discussion is held off the record.)

24 MR. KISSNER: Back on the record.

25 MR. MANN: So we would like to be on the

1 record to reserve our privilege to review the  
2 transcript and file an errata sheet if there's any  
3 corrections that need to be made to the answers that  
4 were given.

5 MR. KISSNER: Off the record.

6

7 (The deposition concluded at 4:57 p.m.)

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## 1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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14 \* \* \* \* \*

15 I, TANNER JAMES, deponent herein, do hereby  
16 certify and declare the within and foregoing  
17 transcription to be my deposition in said action;  
18 that I have read, corrected and do hereby affix my  
19 signature to said deposition under penalty of  
20 perjury.

21 \_\_\_\_\_  
22 TANNER JAMES, Deponent

23

24

25



## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
 ) SS:  
3 COUNTY OF CLARK )

4

5 I, Karen L. Jones, a duly commissioned and  
6 licensed Court Reporter, Clark County, State of  
7 Nevada, do hereby certify: That I reported the  
taking of the deposition of the witness, TANNER  
8 JAMES, commencing on Tuesday, August 22, 2023 at  
10:01 a.m.

8

9 That prior to being examined, the witness was,  
10 by me, duly sworn to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript of  
said deposition is a complete, true and accurate  
transcription of said shorthand notes.

12

13 I further certify that (1) I am not a relative  
or employee of an attorney or counsel of any of the  
14 parties, nor a relative or employee of an attorney  
or counsel involved in said action, nor a person  
15 financially interested in the action; nor do I have  
any other relationship with any of the parties or  
16 with counsel of any of the parties involved in the  
action that may reasonably cause my impartiality to  
17 be questioned; and (2) that transcript review  
pursuant to NRCP 30(e) was requested.

18

19

20 IN WITNESS HEREOF, I have hereunto set my  
hand, in my office, in the County of Clark, State of  
21 Nevada, this 2nd day of September, 2023.

22



23

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KAREN L. JONES, CCR NO. 694

24

25

Tanner James

In re: Cash Cloud Inc.

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Tanner James

In re: Cash Cloud Inc.

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# **EXHIBIT 7**

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:

CASH CLOUD INC.,  
dba COIN CLOUD,

Debtor.

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)  
)  
) CASE NO.:  
) BK-23-10423-MKN  
)  
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)  
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)  
)

DEPOSITION OF DEBTOR CASH CLOUD INC., DBA COIN CLOUD,

PURSUANT TO FRCP 30(B)(6)

DANIEL MOSES

Taken on Wednesday, August 23, 2023

At 10:00 a.m.

By a Certified Court Reporter

At 1731 Village Center Circle, Suite 150

Las Vegas, Nevada

Reported By: Karen L. Jones, CCR NO. 694  
Job No.: 54262 Firm No. 116F

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1 I N D E X

2 WITNESS: DANIEL MOSES

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 13 Province, LLC as Financial  
 14 Advisor, Effective as of the  
 15 Petition Date

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 16 Province, LLC as Financial  
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 23 Bidding Procedures for Potential  
 24 Plan Sponsors or the Purchase  
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 Debtor's Assets, etc.

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## E X H I B I T S

2

NUMBER

DESCRIPTION

PAGE

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Exhibit 7

Motion for Order Confirming  
Auction Results Approving the  
Sale of Certain of Debtor's  
Assets to Heller Capital Group,  
LLC, and Genesis Coin, Inc.,  
Free and Clear of Liens Claims,  
Encumbrances, and Other  
Interests, etc.

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Exhibit 8

Motion for Entry of an Order  
Authorizing Debtor to Surcharge  
the Collateral of Genesis Global  
Holdco, LLC, Enigma Securities  
Limited, and AVT Nevada, L.P.

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Exhibit 9

Notice of Bid Deadline of  
April 12, 2023 for Submission  
of Term Sheets in Connection  
with Either Plan of  
Reorganization for Debtor or  
Sale of Substantially All of  
Debtor's Assets

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Exhibit 11

Declaration of Daniel Moses  
in Support of Debtor's Motion  
for Entry of an Order Approving  
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All of the Debtor's Assets, etc.

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1 P R O C E E D I N G S

2 \* \* \* \* \*

3 Whereupon --

4 (In an off-the-record discussion held prior  
5 to the commencement of the proceedings, counsel  
6 agreed to waive the court reporter's requirements  
7 under Rule 30(b)(5)(A) and 30(b)(5)(C) of the  
8 Nevada Rules of Civil Procedure.)

9 DANIEL MOSES,

10 having been first duly sworn to testify to the  
11 truth, the whole truth, and nothing but the truth,  
12 was examined and testified as follows:

13

14 EXAMINATION

15 BY MR. KISSNER:

16 Q. Good morning.

17 A. Good morning.

18 Dawn just joined, in case that's  
19 helpful.

20 Q. Oh, Dawn Cica?

21 A. Yes.

22 Q. Okay. That's --

23 A. Chris's --

24 Q. -- Chris's lawyer.

25 So my name is Andrew Kissner. I'm with

1 Morrison Foerster. I represent Enigma Securities  
2 Limited and I'm going to ask you a few questions  
3 today about Cash Cloud, Inc., which hopefully you'll  
4 understand me when I refer to it as "Coin Cloud" or  
5 "the debtor," right?

6 A. Understood. It's called many things.

7 MR. MANN: Can we stipulate to  
8 objections?

9 MR. KISSNER: Yeah. Certainly. And as  
10 with before, one stipulate -- for the record, all  
11 objections other than to form of the question are  
12 preserved and not waived.

13 MR. MANN: Thank you.

14 MR. KISSNER: Was there anything else?

15 MR. MANN: No.

16 BY MR. KISSNER:

17 Q. Could you please state your name for the  
18 record?

19 A. Daniel Moses.

20 Q. And have we ever met before?

21 A. Not in person.

22 Q. We've spoken over a Zoom videoconference  
23 call?

24 A. Correct.

25 Q. And have you ever been deposed before?

1 A. No.

2 Q. You haven't?

3 A. (Shakes head in the negative.)

4 Q. Okay. Welcome.

5 And how are you feeling today?

6 A. I feel great. Thank you.

7 Q. Good.

8 Sleep okay?

9 A. (Nods head in the affirmative.)

10 Q. All right. Is there any reason -- and  
11 we'll get to that in a second, but is there any  
12 reason that you don't think you can give full and  
13 complete testimony today?

14 A. I will give testimony to the best of my  
15 knowledge.

16 Q. Okay. And, sorry if this is personal or  
17 prying, but are you on any drugs or medication that  
18 might affect your ability to recall things?

19 A. I am on no medication at this time.

20 Q. So obviously, we're here. You see the  
21 court reporter who's going to be taking down  
22 everything we say. So there's a couple differences  
23 between sort of normal conversation and how a  
24 deposition goes that might seem unnatural, but  
25 they're sort of key to making sure that we have a

1 clear and concise record, which will also make sure  
2 that you don't have to come back here.

3 The first thing is, please provide a  
4 clear verbal answer as opposed to a nod or a  
5 "uh-huh" or a "huh-uh" because those don't show up  
6 very well on the record.

7 A. Understood.

8 Q. I know that in normal conversation, you  
9 know, oftentimes we have a sense of the question  
10 being asked, we know what's going to be said, and so  
11 we start talking before, you know, the -- before the  
12 question is over, which is normally fine but in a  
13 deposition, again, just because we have the court  
14 reporter here, even if you know what I'm going to  
15 say, I just ask that you wait for me to finish  
16 before answering.

17 A. Understood.

18 Q. And then if you don't understand a  
19 question, that's fine, but please just ask me and  
20 I'll do my best to rephrase it. Conversely if you  
21 do answer a question, then I'm going to assume that  
22 you understood it, fair?

23 A. Understood.

24 Q. And then you might hear objections from  
25 your counsel from time to time which is fine.

1 Certain objections, he has to raise in order to  
2 preserve them. But unless he instructs you not to  
3 answer, you should still answer a question even if  
4 there's been an objection raised.

5 A. Understood.

6 Q. And then we'll take periodic breaks  
7 throughout the deposition, including one in about,  
8 you know, an hour and change. But please let me  
9 know if at any point you feel like you need to take  
10 a break, you know, collect your thoughts, go to the  
11 restroom, whatever. That's totally fine. The only  
12 thing that I ask is that if there's a question  
13 pending that you answer the question before we take  
14 a break.

15 A. Understood.

16 Q. Okay. So with that out of the way,  
17 let's just talk a little bit about you and your  
18 background before we get to this pile of documents  
19 here.

20 So could you tell me who your current  
21 employer is?

22 A. I'm employed by Province, LLC.

23 Q. And what's your current position at  
24 Province?

25 A. I'm a principal and I'm head of



1 institutional creditor advisory.

2 Q. And what are some of your roles and  
3 responsibility as principal and -- I'm sorry -- head  
4 of institutional creditor advisory?

5 A. I represent debtors. I represent  
6 lenders. I represent independent directors and  
7 provide general investment banking and financial  
8 consultancy knowledge base for them.

9 Q. And what are some of the maybe  
10 day-to-day tasks that you do in that capacity?

11 A. I generally help oversee teams of people  
12 who work on providing information that is needed for  
13 each particular assignment in the financial aspects  
14 of the case.

15 Q. Would you say that you specialize in a  
16 particular area, be that an industry vertical or,  
17 you know, a sector of investment banking or  
18 financial advisory?

19 A. No.

20 Q. No? Okay.

21 So you wouldn't say that you only do  
22 corporate restructuring, for example?

23 A. I do not do personal bankruptcy.

24 Q. Okay. But do you do other types of  
25 financial advisory work outside of the context of

1 restructuring?

2 A. We, from time to time, have engagements  
3 in nonrestructuring-related advisory work on a  
4 consultancy basis.

5 Q. But would it be fair to say that the  
6 bulk of your work somehow touches distress or  
7 restructuring; is that fair?

8 A. Yes. There's a large amount of my work  
9 that encompasses distressed.

10 Q. And among the sort of seats at the  
11 table, would you say that you spend most of your  
12 time representing borrowers, debtors, creditors or  
13 an even mix?

14 A. An even mix.

15 Q. Even mix. Okay.

16 And when you're retained to, say,  
17 represent a debtor, is it usually as a financial  
18 advisor? As a CRO? As an investment banker?

19 MR. MANN: Objection to form.

20 THE WITNESS: Province is a financial  
21 advisory firm, so it's generally in that capacity.

22 BY MR. KISSNER:

23 Q. Okay. And how long have you been a  
24 principal and head of -- institutional credit, was  
25 it?

1           A.           I've been there about -- I think it's  
2           about -- shouldn't be the tough question. I think  
3           it's like three and a half years.

4           Q.           Three and a half years?  
5                       And before that, where were you  
6           employed?

7           A.           How far back would you like to go?

8           Q.           Immediately before you were a principal  
9           at Province.

10          A.           I ran my own firm called Pacific Creek  
11          Capital for about eight years.

12          Q.           What was your role there?

13          A.           I was owner and principal.

14          Q.           And what did Pacific Creek do?

15          A.           Pacific Creek was an investment firm  
16          investing in distressed assets.

17          Q.           Would it be fair to call it a hedge  
18          fund?

19          A.           No.

20          Q.           Okay.

21          A.           "Investment management" is a better  
22          word.

23          Q.           Investment management.

24                       Was it investments -- sorry. Strike  
25          that.

1 Was it, you know, proprietary  
2 investments or was it managing investments on behalf  
3 of clients?

4 A. It was both.

5 Q. It was both. Okay.

6 And how long were you there? Did you  
7 say eight years?

8 A. Eight years.

9 Q. Eight years. Okay.

10 And before that?

11 MR. MANN: Objection to form.

12 THE WITNESS: Before that I was at a  
13 firm called Partners Fund in San Francisco.

14 BY MR. KISSNER:

15 Q. And what did Partners Fund do?

16 A. They were a long-short equity fund.

17 Q. So closer to a hedge fund?

18 A. Yes. They were a hedge fund.

19 Q. What was your title there?

20 A. Managing director.

21 Q. And your roles and responsibilities as  
22 managing director?

23 A. I was responsible for helping invest  
24 their credit portfolio.

25 Q. And did you guys have a particular --

1       you said long-short?

2           A.       On the equity side.

3           Q.       On the equity side.   Okay.

4                    So performing investments or?

5           A.       For the credit side.

6           Q.       Did you -- sorry.   Strike that.

7                    Did you also do credit work or only

8       equities?

9           A.       I did only credit or 90 percent credit.

10          Q.       Oh, 90 percent credit.   Okay.   So

11       long-short on the equity side.

12                   And then what was the credit strategy?

13                   MR. MANN:   Objection to form.

14                   THE WITNESS:   They had a -- they had a

15       carve-out to invest in credit.

16       BY MR. KISSNER:

17          Q.       Performing credit?   Distressed credit?

18          A.       All types of credit.

19          Q.       Why did you leave Pacific Creek?

20          A.       It was just time.

21          Q.       It was just time?

22          A.       Uh-huh.

23          Q.       Okay.   Is Pacific Creek still in

24       operation?

25          A.       No.

1 Q. How did Pacific Creek do?

2 MR. MANN: Objection to form.

3 THE WITNESS: I had a very successful  
4 business.

5 BY MR. KISSNER:

6 Q. Okay. Do you miss it?

7 MR. MANN: Objection to form.

8 THE WITNESS: I'm very happy at where  
9 I'm employed at the moment.

10 BY MR. KISSNER:

11 Q. Okay. So you said that Province, they  
12 do some investment banking work, but primarily  
13 financial advisory; is that fair?

14 MR. MANN: Objection to form.

15 THE WITNESS: Province is known as a  
16 crossover firm so they do both financial advisory  
17 and investment banking work.

18 BY MR. KISSNER:

19 Q. Okay. And we'll talk about Coin Cloud  
20 in a minute.

21 In the past have you ever run a sales  
22 and marketing process for a debtor's assets in  
23 Chapter 11?

24 A. Not as a debtor advisor, no.

25 Q. Have you ever run a sales and marketing

1 process for a debtor's assets in Chapter 11 other  
2 than as a debtor advisor?

3 A. No.

4 Q. No, okay.

5 And I apologize in advance. For some  
6 reason when this binder got printed, the notice of  
7 deposition was all the way at the back. So I'm  
8 going to ask you to turn to Tab 48 and maybe just  
9 for ease you can pop it out and put it at the front,  
10 but I leave that to you.

11 MR. KISSNER: And I'll ask that this be  
12 marked as Exhibit 1.

13 (Exhibit 1 marked.)

14 MR. MANN: What tab number was that  
15 again?

16 MR. KISSNER: It was 48.

17 THE WITNESS: 48?

18 MR. KISSNER: Yeah.

19 BY MR. KISSNER:

20 Q. All right. Do you recognize this  
21 document?

22 A. I don't recall this document.

23 Q. Do you mind reviewing it for a second?

24 A. Sure.

25 Q. Can you tell me what it appears to be?

1 A. Topics for examination.

2 Q. Do you understand that you're appearing  
3 here today pursuant to this Exhibit 1?

4 A. I do.

5 Q. Okay. But you haven't reviewed it  
6 before?

7 A. I've reviewed a summary form of it.

8 Q. Could you please turn to page 2 of  
9 Exhibit 1?

10 A. Absolutely.

11 Q. Okay. So do you see that there's a  
12 number of topics listed here?

13 A. I do.

14 Q. Okay. And do you understand that you're  
15 here to testify as a representative of the debtor  
16 regarding certain of these topics?

17 A. I do.

18 Q. Okay. And do you understand that your  
19 testimony on these topics, it's binding on the  
20 debtor?

21 A. I understand.

22 Q. And then you understand that as the  
23 debtor's representative you're required to testify  
24 regarding information that is known or reasonably  
25 knowable or reasonably available to the debtor



1 regarding these topics, correct?

2 A. Understood.

3 Q. Okay. Could you turn your attention to  
4 topic six and read that?

5 A. "The sales and marketing process for the  
6 sale of substantially of all of Coin Cloud's  
7 assets."

8 Q. And are you prepared to testify about  
9 this topic today?

10 A. I am.

11 Q. Okay. And could you read topic seven?

12 A. "The conduct of the auction conducted on  
13 June 2nd, 2023, for Coin Cloud's assets."

14 Q. And are you prepared to testify on  
15 behalf of the debtor on topic seven today?

16 A. I am.

17 Q. Okay. And then could you read topic  
18 eight, please?

19 A. "Any analysis, evaluation or assessment  
20 of the digital currency machines sold to Heller  
21 Capital."

22 Q. And are you prepared to testify on  
23 behalf of the debtor with respect to topic eight  
24 today?

25 A. Yes.

1 Q. Do you have personal knowledge about  
2 each of these topics?

3 A. I have knowledge about each of these  
4 topics.

5 Q. You said you have knowledge of about  
6 each of these topics.

7 Do you have personal knowledge about  
8 each of these topics?

9 A. I don't understand the difference.

10 Q. Do you -- fair.

11 Do you have knowledge based off of your  
12 personal recollections or interactions with respect  
13 to the subject of these topics?

14 A. Yes.

15 Q. Okay. And in preparing to testify today  
16 as a representative of the debtor, did you  
17 supplement that personal knowledge in any way?

18 A. To prepare for the deposition, I looked  
19 at the DIP documents again, I looked at the APA  
20 again, I looked at the Province invoices again.

21 Q. Anything else?

22 A. And I looked at the bid procedure  
23 document again.

24 Q. And did those documents help you refresh  
25 your recollection of certain matters?

1 A. It did.

2 Q. Okay. And did you have discussions with  
3 anybody at the debtor to prepare for today's  
4 testimony?

5 MR. MANN: Objection to form.

6 MR. KISSNER: I'll strike that.

7 BY MR. KISSNER:

8 Q. Did you have discussions with any  
9 employees of the debtor in preparation for today's  
10 testimony?

11 A. No.

12 Q. No.

13 Did you have discussions with anybody  
14 else at Province in preparation for today's  
15 testimony?

16 A. Yes.

17 Q. Who did you speak with?

18 A. Paul Huygens, Tanner James.

19 Q. What did you guys talk about?

20 MR. MANN: Objection to form.

21 THE WITNESS: Conduct and form.

22 BY MR. KISSNER:

23 Q. And did you have any discussions with  
24 anybody representing or relating to the creditors'  
25 committee preparing for today?

1 A. I did not.

2 Q. And just to be clear, when I say  
3 "creditors' committee" you'll understand me to refer  
4 to the Official Committee of Unsecured Creditors of  
5 Cash Cloud, Inc.?

6 A. I understand.

7 Q. So other than talking to employees at  
8 Province, did you have discussions with anybody else  
9 in preparation for this testimony?

10 MR. MANN: Objection to form.

11 THE WITNESS: My -- our counsel, co --  
12 Fox Rothschild.

13 BY MR. KISSNER:

14 Q. How long would you say you spent in  
15 total preparing for today's testimony?

16 A. I'd say a couple hours.

17 Q. A couple hours?

18 A. (Nods head in the affirmative.)

19 Q. Let's talk a little bit about the  
20 retention of Province by the debtor, okay?

21 When were you retained?

22 A. January -- my recollection is  
23 January 2023.

24 Q. Okay. And do you recall what the scope  
25 of your retention was?

1 A. Financial advisor for the debtor.

2 Q. Were you also retained to be an  
3 investment banker for the debtor?

4 A. We were retained to all services from  
5 financial advisory through investment banking.

6 Q. How would you describe those services?

7 MR. MANN: Objection to form.

8 THE WITNESS: We -- you know, as a  
9 financial advisor, we would go in, analyze the  
10 company, work with management and try to help figure  
11 out the best way for reorganization of that company.

12 BY MR. KISSNER:

13 Q. Okay. And that description is of  
14 financial advisory services or --

15 A. It's both.

16 Q. What would you say the difference  
17 between an investment banker and a financial advisor  
18 is?

19 MR. MANN: Objection to form.

20 THE WITNESS: I don't think there's any  
21 difference.

22 BY MR. KISSNER:

23 Q. You don't think there's any difference?

24 A. Not much.

25 Q. You've been --

1 A. They --

2 Q. Sorry, go ahead.

3 A. They have different tasks but, you know,  
4 they're all generally studying financial knowledge  
5 of a company.

6 Q. How do you think the tasks differ  
7 between a financial advisor and an investment  
8 banker?

9 MR. MANN: Objection to form.

10 THE WITNESS: A financial advisor really  
11 digs deeply into the operations of the company and  
12 puts together everything from 13-week cash flows to  
13 budgets and really goes through the financials of  
14 the company on a daily basis.

15 An investment banker is working on  
16 strategy, working with those same financial analyses  
17 to figure out what the best course of action,  
18 whether it be just a straight reorganization or a  
19 sale or whatever is the best way to go in order to  
20 maximize value for all creditors.

21 BY MR. KISSNER:

22 Q. Now, at Province are there different  
23 teams that specialize in -- strike that.

24 At Province are there different  
25 investment banking and financial advisory teams?

1 A. No.

2 Q. No.

3 Who else worked with you at Province on  
4 this retention -- or on this engagement, rather?

5 MR. MANN: Objection.

6 THE WITNESS: Paul Huygens who was  
7 founder of the firm and, I guess, key principal,  
8 Tanner James and Spencer Stires.

9 BY MR. KISSNER:

10 Q. Now, Mr. Huygens, would you say that he  
11 specializes in a particular area of practice?

12 MR. MANN: Objection to form.

13 THE WITNESS: We all work on many  
14 different engagements.

15 BY MR. KISSNER:

16 Q. Would you consider him an investment  
17 banker?

18 MR. MANN: Objection to form.

19 THE WITNESS: I consider everybody in  
20 the firm can act as a financial advisor or an  
21 investment banker or both.

22 BY MR. KISSNER:

23 Q. And Mr. James, would you consider him a  
24 expert in investment banking or financial advisory  
25 work?

1 MR. MANN: Objection to form.

2 THE WITNESS: Everybody has the same  
3 tasks where they work on both.

4 BY MR. KISSNER:

5 Q. Same question for -- Mr. Stires, is it?

6 A. Yes.

7 MR. MANN: Objection to form.

8 THE WITNESS: Yes.

9 We are a crossover firm.

10 BY MR. KISSNER:

11 Q. Do you recall what your fees -- what  
12 your fee arrangement was in this case?

13 A. I do.

14 Q. Can you describe it?

15 A. We are -- we were employed as an  
16 hourly -- on an hourly rate with a success fee of  
17 certain of the sale of the assets.

18 Q. So would it be fair to say that a  
19 portion of your fees are contingent?

20 A. Yes.

21 Q. And they're contingent upon a successful  
22 transaction?

23 A. Correct.

24 Q. Would it be fair to say that your fees  
25 are higher if the amount received by the company is



1 higher and lower if the amount received by the  
2 company is lower?

3 MR. MANN: Objection to form.

4 THE WITNESS: For a portion.

5 BY MR. KISSNER:

6 Q. For a portion.

7 A. Uh-huh.

8 Q. Could you describe what you mean by  
9 that?

10 A. The majority of our work is done on an  
11 hourly basis.

12 Q. Did your fees -- strike that.

13 Did the amount of your fees depend on  
14 the form in which a transaction took?

15 MR. MANN: Objection to form.

16 THE WITNESS: No.

17 BY MR. KISSNER:

18 Q. No?

19 A. (Shakes head in the negative.)

20 Q. So would you have received the same  
21 amount of consideration in a sale versus a plan  
22 sponsorship transaction?

23 MR. MANN: Objection to form.

24 THE WITNESS: I don't recall.

25 ///

1 BY MR. KISSNER:

2 Q. Okay. And did your fee depend on the  
3 identity of your transaction counterparty?

4 MR. MANN: Objection to form.

5 THE WITNESS: No.

6 BY MR. KISSNER:

7 Q. Why don't we turn in our binder to Tab 6  
8 which I'll ask be marked as Exhibit 2.

9 (Exhibit 2 marked.)

10 BY MR. KISSNER:

11 Q. Do you recognize this document?

12 A. I've -- I have never seen this document  
13 before.

14 Q. Can you tell me what it appears to be?

15 A. An engagement letter of Province.

16 Q. Engagement letter between?

17 A. Province and Cash Cloud or Coin Cloud.

18 Q. But you've never seen this document  
19 before?

20 A. No. The signature is Paul Huygens'.

21 Q. Okay. But you've never reviewed it?

22 A. I've never reviewed it.

23 Q. Could you turn to the second page and  
24 could you turn to paragraph 2 entitled  
25 "Compensation." Do you see that?

1 A. I do.

2 Q. And could you just read that to  
3 yourself. You don't have to read it out loud, but  
4 just read starting at paragraph 2, all the way to  
5 the end of subsection C. And just let me know when  
6 you're done.

7 A. Sure.

8 I'm finished, Andrew.

9 Q. Could you just describe, in your own  
10 words, what you understand paragraph 2 of this  
11 engagement letter to mean?

12 MR. MANN: Objection to form.

13 THE WITNESS: Paragraph 2, subsection  
14 "Compensation" lays out the different ways that a  
15 professional in our business could get paid.

16 BY MR. KISSNER:

17 Q. Okay. Is that it?

18 A. Uh-huh.

19 Q. Could you tell me what an "arranger fee"  
20 is?

21 MR. MANN: Objection to form.

22 THE WITNESS: Arranger fee is typically  
23 put in place when you have a DIP financing.

24 BY MR. KISSNER:

25 Q. Okay. So that's typically what an

1 arranger fee means.

2 Could you look at paragraph 2(b) here.

3 And do you see where it says an "arranger fee"?

4 A. Uh-huh.

5 Q. Could you tell me what you understand an  
6 "arranger fee" to mean in the context of this  
7 document?

8 MR. MANN: Objection to form. And I'll  
9 object to -- he's appearing today. We went through  
10 the items of six, seven, and eight. I don't know  
11 how this terms of engagement, him knowing "arranger  
12 fee" in the context of this document, ties into --

13 MR. KISSNER: Come on. You don't think  
14 the terms by which they were going to get paid is  
15 relevant to the conduct of the auction and the  
16 conduct of the sale? Just laying a foundation here.  
17 If you're going to object to form to everything, so.

18 MR. MANN: Okay.

19 BY MR. KISSNER:

20 Q. You can answer. And if you don't  
21 remember, I can read back the question.

22 A. The arranger fee is relevant for a DIP  
23 financing, as I previously stated.

24 Q. Okay. How is it relevant?

25 MR. MANN: Objection to form.

1 THE WITNESS: Province would receive a  
2 fee if we arrange for the party who provides the  
3 DIP.

4 BY MR. KISSNER:

5 Q. And there's a term here, it says a  
6 "Province lender." Do you see that?

7 A. Uh-huh.

8 Q. Do you have an understanding what at  
9 that term means?

10 MR. MANN: Objection to form.

11 THE WITNESS: Typically a Province  
12 lender is someone who we bring in as a third party  
13 that the company does not have a prior relationship  
14 with.

15 BY MR. KISSNER:

16 Q. So is the idea that you wouldn't receive  
17 a fee for a transaction consummated by a party  
18 Province didn't bring to the table? Is that fair?

19 MR. MANN: Objection to form.

20 THE WITNESS: Please define  
21 "transaction."

22 BY MR. KISSNER:

23 Q. Sure. So this letter says that Province  
24 will earn an arranger fee if it arranges financing  
25 with a Province lender. And you said that a

1 Province lender is a lender that Province identified  
2 for the company, fair?

3 MR. MANN: Objection to form.

4 THE WITNESS: That would be correct.

5 BY MR. KISSNER:

6 Q. So is the idea then that if Province  
7 didn't find the lender, Province wouldn't earn a  
8 fee?

9 MR. MANN: Objection to form.

10 THE WITNESS: Correct.

11 BY MR. KISSNER:

12 Q. Could you take a look at subparagraph C,  
13 restructuring fee, and can you go to the third line  
14 that begins "that may become due hereunder," and  
15 then read the portion beginning with "the company,"  
16 please.

17 A. "The company shall pay Province a fee in  
18 United States dollars in the amount of three percent  
19 of the value of all debt and equity financing of the  
20 company as of the effective date."

21 Q. Keep going.

22 A. "Provided, however, should all or a  
23 portion of the exit financing be provided by a  
24 Province lender, then such Province lender exit  
25 financing, whether through exit equity or debt

1 financing, the company shall pay Province a fee, in  
2 United States -- in the amount of one and a half  
3 percent of such Province lender exit financing, with  
4 any other exit financing generating a three percent  
5 fee as otherwise indicated above."

6 Q. Could you explain, in your own words,  
7 what you understand that to mean?

8 MR. MANN: Objection to form.

9 THE WITNESS: Effectively, Province is  
10 to receive a three percent of fee on the value of  
11 all debt equity financing of the company as of the  
12 effective date.

13 BY MR. KISSNER:

14 Q. Could you explain what you understand  
15 the proviso in that paragraph to mean?

16 MR. MANN: Objection to form.

17 THE WITNESS: Can you please read the  
18 proviso so I know what you're referring to?

19 BY MR. KISSNER:

20 Q. The portion you just read that began  
21 "provided however."

22 A. That we're going to receive a one and a  
23 half percent fee if it's a Province lender.

24 Q. And if it's not a Province lender you'd  
25 receive a different fee?

1 A. It says three percent.

2 Q. Okay. Help me understand. Why would  
3 you have gotten paid more if exit financing was  
4 provided by somebody who wasn't a Province lender?

5 MR. MANN: Objection to form.

6 THE WITNESS: I did not negotiate the  
7 fees here.

8 BY MR. KISSNER:

9 Q. Fair enough.

10 Before, do you recall, I asked you if  
11 the amount of consideration you'd receive in this  
12 matter depended on the identity of the counterparty?

13 A. I remember.

14 Q. Does this refresh your recollection as  
15 to whether the amount of compensation Province  
16 received in this engagement depended on the identity  
17 of the counterparty?

18 MR. MANN: Objection to form.

19 THE WITNESS: Yes. This is standard.

20 BY MR. KISSNER:

21 Q. Okay. But to be clear, the amount of  
22 consideration was contingent upon the identity of  
23 the party providing financing?

24 MR. MANN: Objection to form.

25 THE WITNESS: That's correct.



1 BY MR. KISSNER:

2 Q. And as you understand it, under this  
3 engagement letter, had there been an asset sale,  
4 would that have triggered a restructuring fee?

5 MR. MANN: Objection to form.

6 THE WITNESS: I think the answer would  
7 be yes.

8 BY MR. KISSNER:

9 Q. And why is that?

10 MR. MANN: Objection to form.

11 THE WITNESS: I think that could be  
12 considered a form of financing, an asset sale.

13 BY MR. KISSNER:

14 Q. All right. Why don't we turn to Tab 7  
15 which I'll mark as -- or I'll ask the court reporter  
16 to mark as Exhibit 3.

17 (Exhibit 3 marked.)

18 BY MR. KISSNER:

19 Q. Do you recognize this document?

20 A. I have seen many final retention orders.

21 Q. But do you recognize this document?

22 A. I have not read -- I have not read this  
23 document.

24 Q. Okay. If you'd like, feel free to take  
25 a minute to review it and then let me know when

1       you're done.

2           A.       I am familiar with the document.

3           Q.       Could you just tell me what it appears  
4       to be?

5           A.       It appears to be the final order  
6       representing our Province engagement letter.

7           Q.       And could you turn to page 3 and could  
8       you look at paragraph 2, and can you just read that  
9       to yourself. And could you tell me what you  
10      understand paragraph 2 to mean.

11          A.       That the debtor is authorized to pay  
12      Province a fee in the amount of three percent of the  
13      amount of funds agreed to be loaned by any lender  
14      secured by Province in support of  
15      debtor-in-possession financing.

16          Q.       So this was the court approving the  
17      arranger fee that was in the Province engagement  
18      letter, fair?

19                   MR. MANN: Objection to form.

20                   THE WITNESS: It appears to be.

21      BY MR. KISSNER:

22          Q.       And could you read paragraph 3 to  
23      yourself.

24          A.       Okay.

25          Q.       What do you understand paragraph 3 to

1 mean?

2 A. It looks like it's the final order of  
3 the engagement letter.

4 Q. So the court approving the restructuring  
5 fee in the engagement letter, fair?

6 MR. MANN: Objection to form.

7 THE WITNESS: Correct.

8 BY MR. KISSNER:

9 Q. Okay. Could we turn to Tab 8 which I'll  
10 ask the court reporter to mark as Exhibit 4.

11 (Exhibit 4 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this document?

14 A. I have not read this document.

15 Q. Have you ever seen it before?

16 A. No.

17 Q. Well, take a look and tell me when  
18 you're done.

19 A. I am aware of the issue.

20 Q. Could you tell me what this document  
21 appears to be?

22 A. This document is an amendment or a  
23 clarification to the order that was originally  
24 filed, based on comments from the trustee and the  
25 UCC.

1 Q. Do you know who negotiated this on  
2 behalf of Province?

3 A. Paul Huygens.

4 Q. Okay. So you said that this appears to  
5 be a modification or amendment to the original  
6 retention order, fair?

7 A. Clarification.

8 MR. MANN: Objection to form.

9 BY MR. KISSNER:

10 Q. Clarification.

11 What's a clarification?

12 A. It was a clarification that was asked  
13 for by the UCC.

14 Q. What were they asking to be clarified?

15 A. The definition of the incentive fee.

16 Q. If you know, can you tell me what the  
17 committee said was unclear about the definition of  
18 incentive fee?

19 A. I can read you paragraph K on page 3.

20 "Given the lack of clarity as to whether  
21 a restructuring fee is earned upon the consummation  
22 of any Section 363 asset sale and the parties'  
23 concerns that the estate may not be benefiting by  
24 incentivizing reorganization over an asset sale, the  
25 parties agree to resolve any lack of clarity

1 regarding the restructuring fee and its calculation  
2 as stipulated herein."

3 Q. So this was what we were talking about  
4 before, the lack of clarity as to whether Province  
5 would earn a fee upon an asset sale?

6 MR. MANN: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. KISSNER:

9 Q. Now, when Province was retained, were  
10 you asked to pursue any particular form of  
11 transaction?

12 A. No.

13 Q. No. Okay.

14 Just a transaction that would be good  
15 for the company?

16 A. That's where you start.

17 Q. Could you -- and you're already at  
18 page 3 which is Bates-stamped ending 126.

19 Can you go to paragraph 1 and read that  
20 to yourself.

21 A. Will you repeat?

22 Q. If you go to paragraph 1 on the current  
23 page which is Bates-stamped 126.

24 A. Okay.

25 Q. Read it to yourself.

1 Do you understand this paragraph to be  
2 approving the restructuring fee?

3 A. Please define.

4 Q. Well, do you see on line 18 of this  
5 document where there's a defined term "restructuring  
6 fee"?

7 A. That is what's being stipulated.

8 Q. Okay. So you understand this paragraph  
9 to be approving the restructuring fee?

10 A. This is what's being stipulated.

11 Q. Okay. Is there a reason that you're  
12 saying "stipulated" versus "approved"?

13 MR. MANN: Objection to form.

14 THE WITNESS: The document says  
15 "stipulation."

16 BY MR. KISSNER:

17 Q. Okay. Fair.

18 Do you understand this restructuring fee  
19 to be different from that approved in the prior  
20 retention order?

21 MR. MANN: Objection to form.

22 BY MR. KISSNER:

23 Q. And to be clear, we're just talking  
24 about the restructuring fee.

25 A. This looks very similar to the

1 engagement letter.

2 Q. Do you see anything that's different or?

3 A. Not off the top of my head.

4 Q. Not a trick question.

5 A. No, I'm just saying not off the top of  
6 my head.

7 Q. Okay. Could you turn to page 4 which is  
8 Bates-stamped 127, and can you read paragraph 2 to  
9 yourself and let me know when you're done.

10 A. I am finished.

11 Q. Could you tell me what paragraph 2 says,  
12 in your own words?

13 A. That Province will receive three percent  
14 of any sales proceeds from an asset sale under a 363  
15 order with a cap of 500,000.

16 Q. So this paragraph is clarifying the  
17 ambiguity as to whether Province would be entitled  
18 to a fee in a sale, fair?

19 A. Correct.

20 Q. And these changes, they were requested  
21 by the committee?

22 A. Correct.

23 Q. And could you read paragraph 3 to  
24 yourself and let me know when you're done.

25 A. (Indicating.)

1 Q. And just remember to say "yes" or "no."

2 A. Finished.

3 Q. Thank you. I know it's awkward.

4 Could you tell me what paragraph 3 says,  
5 in your own words?

6 A. There's a cap of 500,000 on any asset  
7 sale.

8 Q. Who requested this cap?

9 A. I have no knowledge.

10 Q. Okay. Do you understand Province's fees  
11 to have been capped under the prior engagement  
12 letter and order?

13 MR. MANN: Objection to form.

14 THE WITNESS: No.

15 BY MR. KISSNER:

16 Q. You don't.

17 But through this document, there was now  
18 a cap at \$500,000?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. KISSNER:

22 Q. Did you ever talk to anybody else at  
23 Province about this?

24 MR. MANN: Objection to form.

25 THE WITNESS: Paul Huygens.



1 BY MR. KISSNER:

2 Q. What did you talk to Paul Huygens about  
3 regarding this fee cap?

4 MR. MANN: Objection to form.

5 THE WITNESS: He informed me that this  
6 was being put in place.

7 BY MR. KISSNER:

8 Q. What was your reaction to learning there  
9 was a cap on fees?

10 MR. MANN: Objection to form.

11 THE WITNESS: No reaction.

12 BY MR. KISSNER:

13 Q. And what was his mood like, would you  
14 say, when you had that conversation?

15 MR. MANN: Objection to form.

16 THE WITNESS: No reaction.

17 BY MR. KISSNER:

18 Q. Did the imposition of a cap on fees  
19 impact your work at all in the Coin Cloud  
20 engagement?

21 A. No.

22 Q. Before Province was retained, do you  
23 know if there had been a investment banker or  
24 financial advisor retained before you?

25 MR. MANN: Objection to form.

1 THE WITNESS: Coin Cloud has had many  
2 advisors over the years.

3 BY MR. KISSNER:

4 Q. Are there any of which you're aware of  
5 off the top of your head?

6 A. M3.

7 Q. And M3 refers to M3 Partners?

8 A. Yes.

9 Q. Okay. Does the debtor currently employ  
10 M3?

11 A. No.

12 Q. Do you know why not?

13 MR. MANN: Objection to form.

14 THE WITNESS: I have no knowledge to  
15 that -- no knowledge on that topic.

16 BY MR. KISSNER:

17 Q. So you have no understanding as to why  
18 they no longer work for Coin Cloud?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. KISSNER:

22 Q. Do you know if M3 was engaged as a  
23 financial advisor, investment banker or both?

24 MR. MANN: Objection to form.

25 THE WITNESS: I have no knowledge of

1 M3's engagement.

2 BY MR. KISSNER:

3 Q. Do you know if they contacted any  
4 parties regarding a transaction?

5 MR. MANN: Object to form.

6 MR. KISSNER: Just asking his knowledge.

7 THE WITNESS: I don't recall.

8 BY MR. KISSNER:

9 Q. Are you aware of any other financial  
10 advisors or investment bankers that were retained by  
11 Coin Cloud other than M3?

12 A. I don't recall.

13 Q. Do you know if B. Riley was ever  
14 employed by the debtor?

15 A. B. Riley was.

16 Q. Do you know if B. Riley is currently  
17 employed by the debtor?

18 MR. MANN: Objection to form.

19 THE WITNESS: No, they are not.

20 BY MR. KISSNER:

21 Q. They're not.

22 Do you have an understanding as to why  
23 B. Riley is no longer employed by the debtor?

24 MR. MANN: Objection to form.

25 THE WITNESS: No, I have no knowledge.

1 I'll slow down too.

2 BY MR. KISSNER:

3 Q. Do you know if B. Riley contacted any  
4 parties regarding a transaction with the debtor?

5 MR. MANN: Objection to form.

6 THE WITNESS: No knowledge.

7 BY MR. KISSNER:

8 Q. Do you know, did your -- strike that.

9 You said before that your ability to  
10 earn a fee under the engagement letter, the  
11 retention order and then the retention order as  
12 modified by the stipulation -- I think I have that  
13 right -- that was dependent upon whether Province  
14 had located the relevant counterparty?

15 MR. MANN: Objection to form.

16 BY MR. KISSNER:

17 Q. Is that correct?

18 A. On the financing, correct.

19 Q. What about on the sale -- strike that.

20 Okay. Could you turn back to Tab 8 -- I  
21 guess you still have it -- to paragraph 2 at the top  
22 of the page which discusses a restructuring fee for  
23 a sale transaction, right?

24 MR. MANN: Objection to form.

25 THE WITNESS: Okay.

1 BY MR. KISSNER:

2 Q. Do you understand your ability to earn a  
3 restructuring fee on a sales transaction depended  
4 upon whether Province had located the buyer or not?

5 MR. MANN: Objection to form.

6 THE WITNESS: It does not address that  
7 in that line.

8 BY MR. KISSNER:

9 Q. Okay. But outside of the four corners  
10 of this document, are you aware of whether the  
11 ability to earn a fee on a sale was dependent upon  
12 the identity of the buyer?

13 MR. MANN: Objection to form.

14 THE WITNESS: I don't recall.

15 BY MR. KISSNER:

16 Q. So we'll zoom out a little bit and we'll  
17 stop looking at this for a minute.

18 Are you familiar with what a "stalking  
19 horse" is?

20 A. I am.

21 Q. Can you explain what a stalking horse  
22 is?

23 A. Stalking horse is -- in a transaction is  
24 the buyer who is given certain protections because  
25 they were the first one to actually bid that the

1 debtor agreed to.

2 Q. So a stalking horse is someone -- what's  
3 a good word? -- obtained in connection with the  
4 sale process; fair to say?

5 MR. MANN: Objection to form.

6 THE WITNESS: You're not very clear.  
7 I'm not sure what you're saying with the word  
8 "obtain."

9 BY MR. KISSNER:

10 Q. That's fair. It's not a great verb.

11 A stalking horse would be involved in a  
12 sale process; is that fair to say?

13 A. A stalking horse is an interested party.

14 Q. With respect to a sale, though?

15 A. Correct.

16 Q. And do you know what a "363 sale" is, if  
17 I refer to that term?

18 A. I do.

19 Q. Could you explain what that is?

20 A. A 363 sale is done through a bankruptcy  
21 process. Within the court process, all assets are  
22 sold and the liabilities are left behind, in  
23 simplistic terms.

24 Q. And is it common for there to be a  
25 stalking horse, in your experience, as an interested

1 party in a 363 sale?

2 A. Successful 363 sales typically have a  
3 stalking horse.

4 Q. And do you know what the term "plan  
5 sponsor" refers to?

6 A. I do.

7 Q. Can you explain what that is?

8 A. In a plan of reorganization, it's  
9 somebody who injects -- typically injects capital to  
10 help the company reorganize.

11 Q. Is there a plan sponsor, in your  
12 experience, typically involved in a 363 sale?

13 A. No. They're typically separate.

14 Q. Is there typically a stalking horse in a  
15 plan sponsor process?

16 A. There can be.

17 Q. Is a plan sponsor and a stalking horse  
18 different or are they more or less the same  
19 concepts?

20 MR. MANN: Objection to form.

21 THE WITNESS: They are different  
22 concepts but related.

23 BY MR. KISSNER:

24 Q. Could you elaborate on that?

25 A. You know, a plan sponsor can come

1 typically in two forms, one which is the debtor and  
2 the company agree to an individual as a plan sponsor  
3 or an institution, or number two is sometimes a plan  
4 sponsor is effectively a buyer of the assets through  
5 a plan construct, and is more of a stalking horse  
6 where other people have the ability to actually  
7 compete for that same plan sponsor.

8 Q. Can you tell me if you know why might a  
9 debtor -- strike that.

10 Are there reasons why, in your  
11 experience, a debtor might prefer a plan sponsor  
12 versus a 363 sale?

13 MR. MANN: Objection to form.

14 THE WITNESS: They are different  
15 concepts. Typically a plan sponsor in a plan of  
16 reorganization means the existing company emerges  
17 from bankruptcy. A 363 is an asset sale.

18 BY MR. KISSNER:

19 Q. After an asset sale, is it typical for  
20 existing management to remain in place?

21 MR. MANN: Objection to form.

22 THE WITNESS: Every situation is  
23 different. I will not generalize.

24 BY MR. KISSNER:

25 Q. About how many -- if you can ballpark,



1 about how many engagements have you been involved  
2 with advising a debtor through a restructuring  
3 process?

4 A. I don't recall.

5 Q. Is it more than ten?

6 A. I don't recall. I don't want to state  
7 things on the record that I don't have the  
8 information on. Happy to come back with you on  
9 that.

10 Q. Okay. Would it be fair to say it's been  
11 a lot?

12 MR. MANN: Objection to form.

13 THE WITNESS: I have been a  
14 restructuring advisor for three and a half years and  
15 I've worked on numerous engagements.

16 BY MR. KISSNER:

17 Q. Have you ever been -- strike that.

18 Have you ever worked on an engagement in  
19 which there was a 363 sale after which management  
20 remained in place?

21 MR. MANN: Objection to form.

22 THE WITNESS: Not at Province, no.

23 BY MR. KISSNER:

24 Q. How about before Province?

25 MR. MANN: Objection to form.

1 THE WITNESS: I've only been a  
2 restructuring advisor for three and a half years in  
3 this capacity.

4 BY MR. KISSNER:

5 Q. Conversely, is it typical in a plan  
6 sponsor transaction for management to remain in  
7 place?

8 MR. MANN: Objection to form.

9 THE WITNESS: Varies. Every situation's  
10 different. There is no -- there is no hard and fast  
11 answer. Every situation is different.

12 BY MR. KISSNER:

13 Q. Have you ever advised a debtor through a  
14 restructuring process that involved a plan  
15 sponsorship or plan of reorganization?

16 MR. MANN: Objection to form.

17 THE WITNESS: Can you expand on your  
18 definition?

19 BY MR. KISSNER:

20 Q. Sure. So you've advised debtors in  
21 connection with restructurings before, correct?

22 A. Uh-huh.

23 Q. And those restructurings have presumably  
24 involved some sort of transaction, fair?

25 MR. MANN: Objection to form.

1 THE WITNESS: I have -- okay. Trying to  
2 figure out what you're asking.

3 BY MR. KISSNER:

4 Q. I'm asking if you've ever advised a  
5 debtor on a transaction that took the form of a plan  
6 of reorganization?

7 MR. MANN: Objection to form.

8 THE WITNESS: No.

9 BY MR. KISSNER:

10 Q. No. Okay.

11 So we've been talking about advising  
12 debtors, right? I believe you said before that  
13 you've also advised creditors?

14 A. Correct.

15 Q. Would it be fair to say that, as a  
16 principal, you've also been involved in  
17 restructurings as a creditor?

18 MR. MANN: Objection to form.

19 THE WITNESS: I have.

20 BY MR. KISSNER:

21 Q. And we talked a little bit about, from  
22 the debtor's perspective, the differences between a  
23 363 sale and a plan sponsor transaction, right?

24 A. Yeah.

25 Q. Could you tell me why, in your

1 experience, a creditor might have a preference as to  
2 a plan sponsorship versus a 363 sale?

3 MR. MANN: Objection to form.

4 THE WITNESS: The creditor has the same  
5 incentive as the debtor's advisor, which is to  
6 maximize value for individual creditors and the  
7 estate as a fiduciary.

8 BY MR. KISSNER:

9 Q. In your experience, does the form of  
10 transaction affect the ability to maximize value?

11 A. No.

12 Q. No.

13 Now, when Province was engaged, you said  
14 that there was no particular mandate for a specific  
15 type of transaction, correct?

16 A. Not on day one.

17 Q. Did there come a time at which the  
18 debtor directed Province to pursue a specific form  
19 of transaction?

20 A. No. Province conducted its work,  
21 consulted with parties and worked on transaction  
22 structure after consultation.

23 Q. Okay. Do you know who CKDL Credit is?

24 A. Yes.

25 Q. Who are they?

1 A. They should be the DIP lender entity for  
2 Jason Lu and Komodo Bay.

3 Q. And who's Komodo?

4 A. They're an investment fund based out of  
5 Miami.

6 Q. And could we turn back to Tab 6, which  
7 is Exhibit 2, and we'll go to Exhibit 1, which top  
8 right corner says "page 20."

9 A. You said Tab 6?

10 Q. Yes.

11 A. Okay. What page?

12 Q. It's Exhibit 1, and in the top right  
13 corner it says "page 20 of 21."

14 A. Okay.

15 Q. And can you read -- do you see where it  
16 says "company lenders"?

17 A. I do.

18 Q. Can you read the first entity listed  
19 under "company lenders"?

20 A. Komodo Bay.

21 Q. And that's the Komodo that you were  
22 referring to?

23 A. Correct.

24 Q. What does a "company lender" mean in the  
25 context of this engagement letter?

1 MR. MANN: Objection to form.

2 THE WITNESS: That the company provided  
3 representatives as potential financing for the  
4 company.

5 BY MR. KISSNER:

6 Q. Did Province earn a fee in a financing  
7 executed with a company lender?

8 MR. MANN: Objection to form.

9 THE WITNESS: No.

10 BY MR. KISSNER:

11 Q. And by the way, if I refer to -- if we  
12 refer to Komodo Bay -- strike that.

13 If I refer to "CKDL" or "the DIP lender"  
14 today, you'll understand that I'm talking about CKDL  
15 Credit, the --

16 A. The DIP lender.

17 Q. -- vehicle of Komodo Bay?

18 A. Yes, sir.

19 Q. Okay. Excellent.

20 Let's go to Tab 40, which I'll ask be  
21 marked as Exhibit 5.

22 (Exhibit 5 marked.)

23 BY MR. KISSNER:

24 Q. And if you could turn to the third page.

25 A. (Indicating.)

1 Q. Do you know what this document is?

2 A. Is this the bid procedures motion?

3 Q. Is this a draft?

4 A. It is stated as draft on the upper  
5 right.

6 Q. So could you describe, in your own  
7 words, what this is?

8 A. This looks like it's of a motion of bid  
9 procedures for a plan sponsor.

10 Q. Now, we were talking about CKDL, the DIP  
11 lender, before, right?

12 A. Uh-huh. Yes.

13 Q. Were they ever proposed to be the  
14 stalking horse?

15 A. No.

16 Q. No?

17 A. Not to my knowledge.

18 Q. Fair.

19 Could you turn to page 4 of this  
20 exhibit. Apologies for doing this. So I don't know  
21 why these aren't Bates-stamped. I'm really sorry.

22 So if you could go to -- there's  
23 Exhibit 1 to this document. If you could just  
24 flip -- I'll tell you when you get there.

25 MR. KISSNER: Off the record.

1 (A discussion is held off the record.)

2 MR. KISSNER: Back on the record.

3 BY MR. KISSNER:

4 Q. Could you turn to page 4 of this  
5 document -- actually, page 8. Could you tell me  
6 what this appears to be?

7 A. It's just a draft document.

8 Q. A draft of what?

9 A. It's just a draft bidding procedures.

10 Q. Draft bidding procedures. Okay.  
11 If you could flip, one -- two pages  
12 over?

13 A. Which direction?

14 Q. Further.

15 A. Okay.

16 Q. And if you could look at -- there's a  
17 paragraph 10. Could you read that to me, the first  
18 sentence.

19 A. "The debtor has selected CKD [sic]  
20 Credit, LLC as the stalking horse bidder."

21 Q. Thank you.

22 Does this refresh your recollection as  
23 to whether CKDL was originally the stalking horse?

24 A. No. It was a draft.

25 Q. Do you understand why this draft would



1 have said this?

2 A. We were working -- my assumption is we  
3 were working through milestones.

4 Q. And by "we," you mean whom?

5 A. Fox.

6 Q. And "Fox" refers to Fox Rothschild,  
7 counsel to the debtor?

8 A. Correct.

9 Q. And when you say you were "working  
10 through milestones," can you explain what you mean  
11 by that?

12 A. Every document where you have a DIP  
13 lender has certain milestones that are attached to  
14 it, in order to receive that financing, that they  
15 want in place. And the debtor has the right to  
16 negotiate those and discuss whether those milestones  
17 are something that they view as acceptable or not,  
18 in order to receive financing.

19 Q. And who were you negotiating those  
20 milestones with?

21 A. The DIP lender.

22 Q. And do you recall what the subject of  
23 the dispute was over those milestones?

24 MR. MANN: Objection to form.

25 THE WITNESS: I don't recall.

1 BY MR. KISSNER:

2 Q. You don't recall.

3 A. (Shakes head in the negative.)

4 Q. Was that dispute ever resolved?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't recall. You'll  
7 need to be specific about what "that dispute" was.

8 BY MR. KISSNER:

9 Q. Well, I wasn't there.

10 Could you describe what the dispute was?

11 A. I don't have any recollection.

12 Q. Okay. You just know it related to the  
13 milestones?

14 A. I don't even -- I don't have a  
15 recollection there was a dispute.

16 Q. But CKDL was not ultimately selected as  
17 stalking horse, correct?

18 A. RockItCoin was the stalking horse bid.

19 Q. Is RockItCoin different from CKDL?

20 A. They are.

21 Q. So CKDL was not selected as the stalking  
22 horse?

23 A. That's correct.

24 Q. Now, under this draft of the bid  
25 procedures, was this -- were these bid procedures

1 for a particular type of transaction?

2 A. I have not reviewed this document ahead  
3 of time.

4 Q. Do you have a recollection?

5 A. I don't recall.

6 Q. Do you know if these bid procedures were  
7 for a 363 sale?

8 A. I would have to review the document. I  
9 don't recall.

10 Q. Why don't you take a minute.

11 A. This draft?

12 Q. This draft, correct.

13 A. "Order establishing bidding procedure  
14 and deadlines relating to the proposal for a plan of  
15 reorganization for the debtor."

16 Q. Does that refresh your recollection as  
17 to whether this draft bid procedures related to a  
18 particular type of transaction?

19 A. Based on what I've just read here,  
20 correct.

21 Q. Okay. And based off of what you've just  
22 read, what type of transaction do you understand  
23 this draft of the bidding procedures to contemplate?

24 A. Plan of reorganization for the debtor.

25 Q. And a plan of reorganization, that's not

1 a 363 sale, correct?

2 A. Correct.

3 Q. Can we go to Tab 11, which I'll ask that  
4 we mark as Exhibit 6.

5 (Exhibit 6 marked.)

6 THE WITNESS: You said "Tab 11"?

7 MR. KISSNER: Tab 11, yes. Sorry.

8 BY MR. KISSNER:

9 Q. Do you recognize this document?

10 A. This is the bid procedures motion. I  
11 think.

12 Q. Could you describe briefly what this  
13 document is, beyond a bid procedures motion?

14 A. I can read you exactly what it is. This  
15 is "Debtor's motion for entry of an order approving  
16 auction and bidding procedures for potential plan  
17 sponsors or the purchase of substantially all of the  
18 debtor's assets; approving form notice to be  
19 provided to interested parties; and scheduling a  
20 hearing to consider approval of the highest and best  
21 transaction, cure objections, and confirmation of  
22 the proposed toggle plan."

23 Q. And could you describe, in your own  
24 words, what you understand all that to mean?

25 MR. MANN: Objection to form.

1 THE WITNESS: This motion will basically  
2 simply determine rights and remedies of all parties  
3 and the way the debtor would like the process to  
4 proceed.

5 BY MR. KISSNER:

6 Q. And what process is that?

7 A. "Approve the auction and bidding  
8 procedures for potential plan sponsors or the  
9 purchase of substantially all of the debtor's  
10 assets."

11 Q. So these bid procedures contemplated  
12 either a 363 sale or a plan sponsorship transaction;  
13 is that fair?

14 MR. MANN: Objection to form.

15 THE WITNESS: That's fair.

16 BY MR. KISSNER:

17 Q. But the prior draft that we just  
18 reviewed only pertained to a plan sponsorship  
19 transaction?

20 MR. MANN: Objection to form.

21 THE WITNESS: I did not review the  
22 document, but in form, in title, that's what it  
23 said.

24 BY MR. KISSNER:

25 Q. Okay. Do you have a recollection as to

1       why that changed?

2           A.       My recollection is that the DIP lender  
3       worked with us on that.

4           Q.       Did you talk to Enigma at all about the  
5       decision to include a 363 sale in these bid  
6       procedures?

7           A.       I did not.

8           Q.       And when I say "Enigma," you understand  
9       me to refer to my client Enigma Securities Limited?

10          A.       I personally did not.

11          Q.       Are you aware of anybody else at  
12       Province that might have?

13          A.       I don't recall.

14          Q.       To your knowledge, did Enigma direct  
15       Province or the debtor to revise the bid procedures  
16       to include a 363 sale?

17                   MR. MANN: Objection to form.

18                   THE WITNESS: I have no knowledge on  
19       that topic.

20       BY MR. KISSNER:

21          Q.       To your knowledge, did Enigma direct the  
22       debtor to pursue a 363 sale?

23          A.       I have no knowledge on that topic.

24          Q.       Did Province -- strike that.

25                   Did you ever talk to anybody else at

1 Province about the decision to pursue a 363 sale  
2 versus a plan sponsorship transaction?

3 MR. MANN: Objection to form.

4 THE WITNESS: Our team speaks about  
5 different topics daily.

6 BY MR. KISSNER:

7 Q. Did you personally have a preference  
8 between the two for this debtor?

9 MR. MANN: Objection to form.

10 THE WITNESS: My preference is to  
11 maximize value for all creditors.

12 BY MR. KISSNER:

13 Q. Did you have a view as to which  
14 transaction would maximize value for all creditors?

15 MR. MANN: Objection to form.

16 THE WITNESS: I think they both -- at  
17 that time, potentially, both could be the maximizing  
18 value.

19 BY MR. KISSNER:

20 Q. And "at that time," you're referring to  
21 what period of time?

22 A. When we were strategizing on the  
23 appropriate path for the company.

24 Q. And when was that approximately?

25 A. Over a multi-month period.

1 Q. How about this, do you recall when these  
2 bid procedures were filed?

3 A. I do not.

4 Q. Do you want to look at page 1 of  
5 Exhibit 6, which is right in front of you, and look  
6 up at the very top, the text at the top of the page.

7 A. Entered 4/7/23.

8 Q. Does that refresh your recollection as  
9 to when the bid procedures were filed?

10 A. It does.

11 Q. So at the time that the bid procedures  
12 were filed, which appears to have been April 7th,  
13 you still thought -- strike that.

14 At the time of April 7th, you did not  
15 yet have a view as to whether a 363 sale or a plan  
16 sponsorship transaction would be better?

17 MR. MANN: Objection. Form.

18 THE WITNESS: Correct.

19 BY MR. KISSNER:

20 Q. Do you know if Province's fees would  
21 have differed between a 363 sale and a plan  
22 sponsorship transaction?

23 MR. MANN: Objection to form.

24 THE WITNESS: Not materially.

25 ///



1 BY MR. KISSNER:

2 Q. Not materially?

3 Well, could we turn to back to Tab 8,  
4 which was Exhibit 4.

5 A. Is this right (indicating)? Okay.

6 Q. Could you go to page 3, paragraph 1.

7 A. Okay.

8 Q. If you go down to line 20, could you  
9 read to yourself the passage beginning with  
10 "provided" and ending with the word "above"?

11 A. "Provided, however, should" --

12 Q. You can read it to yourself.

13 A. Okay.

14 Q. Do you understand this passage to mean  
15 that if exit financing was provided by a Province  
16 lender, Province's fee would have been one and one  
17 half percent of such exit financing?

18 A. Uh-huh.

19 MR. MANN: Objection to form.

20 BY MR. KISSNER:

21 Q. And do you understand this passage to  
22 mean that if exit financing was provided by any  
23 party other than a Province lender, a fee of three  
24 percent of such exit financing would have been  
25 earned?

1 MR. MANN: Objection to form.

2 THE WITNESS: Understood.

3 BY MR. KISSNER:

4 Q. Would it be fair to say that a plan  
5 sponsorship transaction would involve exit  
6 financing?

7 A. Sometimes.

8 Q. When wouldn't it?

9 A. Not every company is the same. Not  
10 everyone needs the same type of exit financing.  
11 Generalizations. I won't generalize.

12 Q. Okay. Fair enough.

13 Could you turn to the next page,  
14 paragraph 2. Can you read just paragraph 2 again to  
15 yourself and let me know when you're done.

16 A. I am finished.

17 Q. Do you understand this to mean that in  
18 the event of a 363 sale, Province would earn a three  
19 percent fee regardless of the identity of the buyer?

20 A. I do.

21 Q. So with that in mind, I guess I'll ask  
22 again.

23 Did you have any preference between  
24 pursuing a 363 sale or a plan sponsorship  
25 transaction?

1 MR. MANN: Objection to form.

2 THE WITNESS: No.

3 BY MR. KISSNER:

4 Q. Would you agree that Province was  
5 potentially eligible to earn more in a plan  
6 sponsorship transaction than a 363 sale?

7 MR. MANN: Objection to form.

8 THE WITNESS: Can you rephrase?

9 BY MR. KISSNER:

10 Q. Well, sure.

11 So in a plan sponsorship transaction  
12 that might involve exit financing, Province's  
13 ability to earn a fee was in part based off of the  
14 identity of the party providing exit financing,  
15 fair?

16 A. Potentially.

17 Q. And in the case of a 363 sale,  
18 Province's ability to earn a fee, it didn't depend  
19 on the identity of the buyer, fair?

20 A. That is accurate.

21 Q. Do you think that that had an impact on  
22 Province's decision-making?

23 A. No.

24 Q. Did it have an impact on your  
25 decision-making?

1 A. No.

2 Q. Can you tell me what a "credit bid" is?

3 MR. MANN: Objection to form.

4 MR. KISSNER: Strike that.

5 BY MR. KISSNER:

6 Q. Do you know what a "credit bid" is?

7 A. I do.

8 Q. Could you explain what it means?

9 A. It's when a lender has secured  
10 collateral, in the typical case, where they're able  
11 to use their debt securities to bid for a company  
12 using their debt as first form of consideration.

13 Q. So in laymen's terms, it's when you bid  
14 your debt in return for the collateral that secures  
15 that debt?

16 A. That's correct.

17 Q. Was Province's ability to earn a fee  
18 contingent upon -- strike that.

19 Could Province earn a fee in connection  
20 with a bid that was a credit bid?

21 A. Paragraph 2, "or otherwise not  
22 constituting any proceeds that are credit bid by any  
23 secured lender of the debtor on any liquidated  
24 claim."

25 Q. What do you understand that to mean?

1 A. We would not.

2 Q. You would not earn a restructuring fee  
3 on a bid that took the form of a credit bid?

4 MR. MANN: Objection to form.

5 THE WITNESS: Correct.

6 BY MR. KISSNER:

7 Q. Did that impact Province's  
8 decision-making in this case?

9 A. No.

10 Q. Did it impact your decision-making in  
11 this case?

12 A. No.

13 MR. MANN: Objection to form.

14 MR. KISSNER: And could we go off the  
15 record for a second.

16 (A discussion is held off the record.)

17 MR. KISSNER: Back on the record.

18 BY MR. KISSNER:

19 Q. Now, before, we were talking a little  
20 bit about the difference between a 363 sale and a  
21 plan sponsorship transaction. Do you recall that?

22 A. I do recall.

23 Q. Can a plan sponsor credit bid?

24 A. Potentially.

25 Q. How would that work?

1           A.           Plan sponsor -- you know, if the  
2           companies capitalized correctly on the back end,  
3           then a -- then a credit bid is possible to become  
4           the plan sponsor.

5           Q.           So a debt for equity swap, more or less?

6           A.           Could be.

7           Q.           As you understood it -- strike that.

8                       Do you know if Province would have  
9           earned a fee on a debt for equity swap?

10                      MR. MANN: Objection to form.

11                      THE WITNESS: I do not.

12           BY MR. KISSNER:

13           Q.           Well, why don't we turn back to page 3,  
14           paragraph 1. If you could read the first sentence  
15           to yourself, from line 17 to line 20.

16           A.           We would not.

17           Q.           You would not earn a fee on a --

18           A.           "Excluding any" --

19           Q.           -- debt for equity swap?

20           A.           -- "amounts loaned by the company  
21           lender." I assume that's your assumption for a  
22           credit bid, but it is unclear, the language.

23           Q.           So would it be fair to say then that the  
24           terms of your engagement incentivized Province to  
25           find new money for the company as opposed to a swap

1 of existing debt?

2 A. No.

3 MR. MANN: Objection to form.

4 BY MR. KISSNER:

5 Q. No.

6 But you just said that you wouldn't have  
7 earned a fee in a scenario where there was a debt  
8 for equity swap, correct?

9 MR. MANN: Objection to form.

10 THE WITNESS: Province does not make  
11 decisions for companies based on fees.

12 BY MR. KISSNER:

13 Q. Would you agree that Province -- strike  
14 that.

15 You testified earlier that, while  
16 working at Province, you've been engaged by debtors  
17 and borrowers in the past for transactions?

18 MR. MANN: Objection to form.

19 THE WITNESS: I have not been engaged by  
20 debtors, but I've been engaged by borrowers.

21 BY MR. KISSNER:

22 Q. And what would the -- in your words,  
23 what would be the difference between a debtor and a  
24 borrower?

25 MR. MANN: Objection to form.

1 THE WITNESS: Debtor is the company, a  
2 borrower is typically a lender to the company.

3 BY MR. KISSNER:

4 Q. I think we might have some confusion on  
5 that.

6 A. Okay.

7 Q. You've --

8 A. They can be considered the same thing.  
9 It's terminology. I understand your point.

10 Q. In those prior engagements, did -- were  
11 Province's fees memorialized in an engagement  
12 letter?

13 MR. MANN: Objection to form.

14 THE WITNESS: All Province fees are  
15 memorialized in engagement letters.

16 BY MR. KISSNER:

17 Q. Did any of those engagements, to your  
18 recollection -- strike that.

19 Do you recall what the fee arrangements  
20 were for those prior engagements?

21 A. I don't.

22 Q. Do you recall if any of your prior  
23 engagements have involved a contingency fee?

24 A. I have worked on prior engagements with  
25 contingency fees.



1 Q. Do you have an understanding as to why a  
2 client might include a contingency fee -- strike  
3 that.

4 Do you have an understanding as to why a  
5 client might agree to pay a contingency fee to a  
6 financial advisor or investment banker?

7 MR. MANN: Objection to form.

8 THE WITNESS: To be equally incentivized  
9 to share in success.

10 BY MR. KISSNER:

11 Q. So a contingency fee, as you understand  
12 it, is at least in part intended to incentivize the  
13 advisor?

14 MR. MANN: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. KISSNER:

17 Q. Would you agree that the restructuring  
18 fee in Province's engagement letter with Coin Cloud  
19 is a contingency fee?

20 A. Yes.

21 Q. Do you think its purpose was to  
22 incentivize Province to do something?

23 MR. MANN: Objection to form.

24 THE WITNESS: No.

25 ///

1 BY MR. KISSNER:

2 Q. What do you understand its purpose to  
3 be, if not to incentivize Province?

4 A. It's the standard fee on the back end of  
5 a reorganization, from my perspective. It's  
6 incentivizing us to have the company exit from  
7 bankruptcy, in whatever form that may take, whether  
8 it be an asset sale or a plan of reorganization. It  
9 incentivizes for a success -- the best outcome we  
10 can come to as possible.

11 MR. KISSNER: Okay. I think we can  
12 break now and go off the record because that's all I  
13 have for now before we get into other topics.

14 THE WITNESS: That's fine.

15 (A lunch recess is taken.)

16 MR. KISSNER: Mason, go ahead. Your  
17 show.

18 EXAMINATION

19 BY MR. HIGGINS:

20 Q. Sir, hello. Can you see me and hear me  
21 okay?

22 A. I do.

23 Q. Excellent.

24 So my name is Mason. I'm an attorney  
25 for Av Tech Capital or as -- better known as AVT

1 Nevada LP.

2 So the same notes apply. My questioning  
3 is for yours. And I -- I will note that I talk  
4 quite fast sometimes. If you lose me at all, just  
5 say "hey, hold up a second, what did you say," and  
6 I'll ask it again. All right?

7 A. Sounds great.

8 Q. Sounds good.

9 Let's start off with talking about how  
10 the debtor has characterized AVT. So I want to  
11 refer you to what's marked as Tab 11 in your binder  
12 there. Did you find that?

13 A. Yeah.

14 Q. What is that document? I'm sorry. I  
15 cut you off.

16 A. Make sure we're on the right one.  
17 Motion for entry of an order approving auction and  
18 bidding procedures?

19 Q. That should be correct, yeah.

20 Can we agree the document is filed as  
21 Document 392 and was filed on April 27, 2023?

22 A. 4/7/23, yes.

23 Q. Perfect.

24 A. Is that the right document? I think  
25 we're on the same page.

1 Q. All right. If we scroll down to page 7  
2 of that document, using the upper right-hand corner.  
3 There's those blue page numbers up there.

4 A. "Stalking horse," on the bottom of that  
5 page?

6 Q. Page 7, using the blue page numbers, is  
7 page 6 of the document. You'll see -- there should  
8 be footnotes at the bottom of that page.

9 A. Okay. Got it. Thank you.

10 Q. Would you please read for me that first  
11 paragraph of footnote 3 at the bottom of the page.

12 A. "Although AVT Nevada LP filed a UCC-1  
13 financing statement against the leased DCMs, the AVT  
14 financing arrangement purports to be a true lease,  
15 with AVT filing the AVT UCC-1 solely as  
16 precautionary measure. Accordingly, debtor assumes  
17 that AVT is not a secured creditor for purpose of  
18 this motion, with a reservation of rights on issues  
19 for context. See McAlary declaration."

20 Q. Can we agree that, as of the date of  
21 that document, the debtor understood AVT to be a  
22 lessor in this proceeding?

23 A. That is what the footnote says.

24 Q. And additionally, that AVT held a true  
25 lease over those AVT DCMs?

1           A.           This is -- this is -- it's -- but this  
2           is all in a draft form, so that's what it says, it  
3           says, quote, true lease.

4           Q.           Okay. And can we also agree that, as of  
5           the date of this document, the debtor did not -- I'm  
6           sorry, strike that -- was not treating AVT as a  
7           secured creditor?

8                       MR. KISSNER: Objection to form.

9                       THE WITNESS: That's -- that's not  
10          correct. All this says is that you filed a UCC-1  
11          and a proof of claim as a secured creditor. This  
12          says that you did that as a precautionary measure.  
13          It does not reference whether they were considering  
14          you in this -- this paragraph whether you were a  
15          true lease or a secured creditor. It just says you  
16          had a precautionary measure, did that.

17          BY MR. HIGGINS:

18          Q.           To refer you back to that same footnote  
19          there, are we in dispute that that footnote provides  
20          that AVT is not a secured creditor for this motion's  
21          purposes?

22          A.           This says "with a reservation of  
23          rights."

24          Q.           Okay. So then we're --

25          A.           With a reservation of rights.

1 Q. Okay. So we are otherwise agreeing,  
2 noting, of course, they reserve rights on the issue.

3 MR. KISSNER: Objection to form.

4 BY MR. HIGGINS:

5 Q. Can I have a verbal answer, please?

6 A. I didn't know there was a question. You  
7 made a statement.

8 Q. That was my question. So --

9 A. Can you rephrase then, sir.

10 Q. Of course. Thank you for asking me to.

11 So we're otherwise agreed that, noting  
12 the debtor's reservation of rights, AVT was not  
13 being treated as a secured creditor for this  
14 motion's purposes?

15 MR. KISSNER: Objection to form.

16 THE WITNESS: I don't think this note  
17 says that.

18 BY MR. HIGGINS:

19 Q. Okay. Let's move on then. Let's turn  
20 to Tab 27 in front of you in your binder.

21 A. Sure.

22 (Exhibit 7 marked.)

23 MR. KISSNER: And this is Andrew  
24 Kissner. While we're doing that, it wasn't relevant  
25 before, but can we just stipulate for the record

1 that objections raised by one party are preserved  
2 for all parties?

3 MR. MANN: Yeah. That sounds great.

4 MR. KISSNER: Is that all right,  
5 Mr. Higgins?

6 MR. HIGGINS: That's all right. Thanks  
7 for asking.

8 MR. KISSNER: Excellent.

9 THE WITNESS: Tab 27, I am there, sir.

10 BY MR. HIGGINS:

11 Q. Thank you.

12 What is this document?

13 A. Motion for order confirming auction  
14 results; approving the sale of certain of the  
15 debtor's assets to Heller Capital and Genesis Coin  
16 free and clear of liens, claims, encumbrances and  
17 other interests; authorizing the assumption and  
18 assignment of certain of the debtor's executory  
19 contracts and unexpired leases related thereto; and  
20 granting related relief.

21 Q. Thank you.

22 And can we agree for the record this is  
23 Document 714?

24 A. Yes. I see it on the top in blue.

25 Q. And it was filed on June 16, 2023?

1 A. June 16, 2023.

2 Q. And if I call this document "the sale  
3 motion," will you understand that reference?

4 A. Sure. I can agree with that.

5 Q. Were you involved in drafting or  
6 preparing this motion?

7 A. My involvement was providing a  
8 declaration to the sale results.

9 Q. Okay. Were you otherwise involved in  
10 reviewing drafts of this motion or otherwise in  
11 preparing what we have before us?

12 A. I don't recall if I actually reviewed  
13 this draft or just provided the declaration.

14 Q. Please turn to page 15 of that document,  
15 again using the markings in the upper right corner.

16 A. Sure. Is that Exhibit A, Heller Asset  
17 Purchase Agreement?

18 Q. It is.

19 And can we agree that "Heller" refers to  
20 Heller Capital Group, LLC?

21 A. Yes, sir.

22 Q. All right. Please turn ahead three more  
23 pages to what's marked as page 18 on that document.

24 A. 18 of 66. Okay.

25 Q. And do you see where it's marked



1 "Section 1.9" of the Heller APA?

2 A. I do.

3 Q. And what's the title of Section 1.9 of  
4 the Heller APA?

5 A. "Purchase Price Adjustment For AVT  
6 Nevada LP Machines."

7 Q. Please read me that first sentence of  
8 that section.

9 A. "Debtor leases approximately 483 DCMs  
10 from AVT Nevada LP, who has agreed in principle to  
11 allow debtor to include the AVT DCMs as part of the  
12 purchase assets."

13 Q. Can we agree, then, as of the date of  
14 this document, that the debtor understood AVT to be  
15 a lessor regarding those AVT DCMs?

16 MR. MANN: Objection to form.

17 THE WITNESS: I am not going to speak to  
18 the group -- to the entire debtor professionals of  
19 what they thought.

20 BY MR. HIGGINS:

21 Q. To your knowledge, who drafted this  
22 document?

23 A. Fox Rothschild.

24 Q. Debtor's counsel, correct?

25 A. Mason, one second. Just getting some

1 coffee, sorry, handed to me.

2 Continue, Mason.

3 Q. No problem at all.

4 And Fox Rothschild is debtor's counsel;  
5 is that correct?

6 A. Correct.

7 Q. To your knowledge, was the debtor  
8 furnished a copy of this motion and its exhibits  
9 before it was filed?

10 A. Was the debtor?

11 Q. Furnished a copy of this motion and the  
12 exhibits to it before it was filed?

13 A. And when you refer to the "debtor" as --  
14 definitionally as which parties? As Danny Ayala?  
15 As director of the board? And Chris McAlary, if he  
16 was still there?

17 Q. I'm referring to Cash Cloud, Inc., dba  
18 Coin Cloud, or anybody authorized to speak on its  
19 behalf.

20 A. Yes. They have -- I'm sure have seen  
21 this document.

22 Q. Okay. So then to ask my question a  
23 little bit differently, we can agree this document  
24 purports -- strike that.

25 This document identifies that AVT leases

1 certain DCMs to the debtor?

2 MR. MANN: Objection to form.

3 THE WITNESS: This document talks about  
4 AVT as a lease, despite a proof of claim being filed  
5 by AVT as a secured creditor.

6 BY MR. HIGGINS:

7 Q. All right. Are you aware of or privy to  
8 any discussions between the debtor and its counsel,  
9 from around June 16, 2023, regarding AVT's status as  
10 a lessor?

11 A. I was not involved in those  
12 conversations.

13 Q. Did any exist?

14 A. I was not involved in those  
15 conversations.

16 Q. Do you have any reason to believe that  
17 AVT and Fox Rothschild would disagree at this time  
18 regarding AVT's status in these proceedings?

19 A. I have no knowledge of that  
20 conversation.

21 Q. Okay. Can you please read the following  
22 sentence on that same Section 1.9, beginning with  
23 "prior to"?

24 A. Sorry, just trying to find the --

25 Q. No problem.

1 A. Where does it follow?

2 MR. KISSNER: It's the second sentence.

3 THE WITNESS: Oh, thank you.

4 "Prior to any hearing to approve the  
5 sale order, debtor shall obtain written consent from  
6 AVT for the inclusion of AVT DCMs in the purchased  
7 assets."

8 BY MR. HIGGINS:

9 Q. And please keep going one more sentence.

10 A. "If debtor does not obtain such written  
11 consent from AVT or if AVT otherwise revokes its  
12 consent to have the AVT DCMs included in the  
13 purchased assets prior to the hearing to approve the  
14 sale order, the AVT DCMs shall not be included in  
15 the purchased assets, and the purchase price shall  
16 be reduced pursuant to a pro rata allocation of  
17 purchase price for AVT DCMs, which amount shall also  
18 be included on the allocation statement."

19 I am aware of that, yes.

20 Q. Thank you.

21 And would you dispute that this  
22 document, the motion, including its exhibits, were  
23 amended on June 19, 2023, when what was filed as  
24 Document 730 hit the record?

25 MR. KISSNER: Objection. Form.

1 THE WITNESS: Are you pointing to me  
2 something to look at, an amendment here, so I can  
3 confirm that for you?

4 BY MR. HIGGINS:

5 Q. I'm not.

6 I'm asking you if you are aware this  
7 document was amended on June 19, 2023?

8 A. I don't know, off the top of my head, if  
9 this was the final document or if this -- there was  
10 an amendment to it without seeing it.

11 Q. Okay. That makes sense.

12 Would you be surprised to learn that  
13 when this document was amended, this section,  
14 Section 1.9 of the Heller APA, was not changed in  
15 any way?

16 MR. MANN: Objection to form.

17 THE WITNESS: Surprised?

18 BY MR. HIGGINS:

19 Q. Would you be surprised to learn that,  
20 yes.

21 MR. MANN: Objection to form.

22 THE WITNESS: I don't think I would have  
23 surprise or lack of surprise. I think that in  
24 amendments of documents, sometimes paragraphs are  
25 changed and negotiations happen in between, and

1 sometimes they are not. So I can't -- I would not  
2 ever characterize myself as surprised, other than,  
3 you know, in these -- these occurrences, things  
4 sometimes stay the same, sometimes they change  
5 between drafts or amendments.

6 BY MR. HIGGINS:

7 Q. Fair enough.

8 Do you ever recall discussing the  
9 contents of this section, Section 1.9 of the Heller  
10 APA?

11 A. I -- I don't recall the exact --  
12 discussing 1.9 exactly.

13 Q. Do you recall any discussions regarding  
14 Av Tech's -- pardon me, strike that -- AVT's rights  
15 to consent or withdraw consent in these proceedings?

16 A. I have -- originally we had a  
17 conversation with the buyer. The buyer asked  
18 whether this was a lease or a financing. I was -- I  
19 have been advised that he was -- they filed a UCC-1  
20 and a proof of claim as a secured creditor, and you  
21 can take -- and I have advised him to take any  
22 measures that you think make sense, from his  
23 standpoint. And that was probably the last I have  
24 had a conversation on that with anybody.

25 Q. And when you say "the buyer," are you

1 referring to Heller Capital or Genesis Coin --

2 A. Heller, because Genesis Coin is not  
3 relevant for this -- for this part of the asset  
4 purchase.

5 Q. Okay. To make sure I understand what  
6 you just told me, Heller Capital approached you  
7 asking whether or not AVT was a lessor or a  
8 financier in this matter?

9 MR. MANN: Objection to form.

10 BY MR. HIGGINS:

11 Q. Is that correct?

12 A. No. It was brought up in a conversation  
13 about all parties, and there was no approach by  
14 Heller. That is my recollection.

15 Q. Do you recall when approximately that  
16 discussion was had?

17 A. I do not recall.

18 Q. Do you recall if it was before or after  
19 the auction on June 2nd, 2023?

20 A. I don't recall.

21 Q. Do you recall how AVT's DCMs  
22 specifically were marketed leading up to the auction  
23 on June 2nd, 2023?

24 A. We marketed all the collateral together.

25 Q. Am I correct then to assume that the

1 debtor did not differentiate between AVT's DCMs and,  
2 we'll say Enigma's DCMs in its marketing ahead of  
3 the auction on June 2nd?

4 A. Only to the extent that the collateral  
5 was different. The buyer did due diligence on each  
6 type of assets within the collateral pool, and we  
7 classified things and looked at things, whether they  
8 were different models or -- of Cole Kepro or what  
9 type of machines they were, is how the debtor was --  
10 asked us to approach them at the time.

11 Q. Understood. Thank you.

12 These discussions with Heller Capital,  
13 were these over the phone or via e-mail? How were  
14 these had?

15 A. In general, or is there a specific  
16 timeframe you're looking for? In general, we spoke  
17 on the phone.

18 Q. On the phone? Thank you.

19 And I'll ask you just one more time if  
20 you can recall any clarity as to when that  
21 discussion with Heller Capital regarding whether AVT  
22 was a lessor or a financier occurred before or after  
23 the auction. Do you have any milestones to place  
24 that discussion around?

25 MR. KISSNER: Objection to form.



1 THE WITNESS: I have no recollection  
2 there.

3 BY MR. HIGGINS:

4 Q. That's fair enough. Let's step back a  
5 little bit and talk about the auction more  
6 generally.

7 Is it your understanding that Heller  
8 Capital's bid entered at the auction was over each  
9 of the DCMs, including AVT's DCMs?

10 A. Will you rephrase for me, please?

11 Q. Certainly, yeah.

12 Is it your understanding that when  
13 Heller Capital submitted its bid at the auction on  
14 June 2nd, that it was bidding to purchase all of the  
15 debtor's leased or owned DCMs, to include AVT's  
16 DCMs?

17 MR. KISSNER: Objection to form.

18 THE WITNESS: Heller Capital was bidding  
19 originally for 2200 in storage and 3500 that were in  
20 the field.

21 BY MR. HIGGINS:

22 Q. And do those numbers, to your  
23 understanding, include AVT's DCMs?

24 A. They do.

25 Q. Would you be surprised to learn that the

1 debtor first contacted AVT after the auction to ask  
2 whether or not it would consent to including its  
3 DCMs in the sale?

4 MR. KISSNER: Objection to form.

5 THE WITNESS: I don't know when the  
6 debtor contacted AVT originally. I did not have  
7 direct communications with AVT at any time in this  
8 case.

9 BY MR. HIGGINS:

10 Q. Until now. Understood.

11 A. Until now.

12 Q. Do you have any reason to believe,  
13 though, that the debtor contacted AVT before the  
14 auction to ask whether it would consent to its  
15 machines being included in the sale?

16 A. I have no reason to believe or not to  
17 believe that happened prior to the auction, as I did  
18 not have direct contact with AVT.

19 Q. Fair enough.

20 Do you believe that the sale to Heller  
21 Capital would have closed without the AVT DCMs being  
22 included in the sale?

23 MR. KISSNER: Objection to form.

24 THE WITNESS: I think that -- I think  
25 that -- I don't know what Heller Capital's

1 intentions were in terms of the amount, a minimum  
2 amount of machines they were looking to buy. So  
3 whether AVT would be included would affect that or  
4 not, we never had a conversation, if there was a  
5 minimum that they needed.

6 BY MR. HIGGINS:

7 Q. Did you ever discuss with Heller Capital  
8 its intentions regarding AVT's machines in  
9 particular?

10 MR. MANN: Objection to form.

11 THE WITNESS: Can you define  
12 "intentions," please?

13 BY MR. HIGGINS:

14 Q. I'm asking you whether or not you can  
15 offer any clarity as to whether Heller had any  
16 intentions for AVT's machines specifically?

17 MR. KISSNER: Objection to form.

18 THE WITNESS: As I've previously stated,  
19 the assets were marketed with 2200 machines that  
20 were, from the books and records of the company, in  
21 the warehouses, and 3500 in the field.

22 BY MR. HIGGINS:

23 Q. And as we agreed previously, those  
24 numbers do include AVT's DCMs; is that correct?

25 MR. MANN: Objection to form.

1 THE WITNESS: They do --

2 BY MR. HIGGINS:

3 Q. So is it --

4 A. -- to my knowledge, yes.

5 Q. Thank you.

6 So is it fair to say then that Heller  
7 Capital intended to purchase AVT's DCMs when it  
8 placed its bid on June 2nd?

9 MR. KISSNER: Objection to form.

10 THE WITNESS: Again, Heller Capital  
11 was -- intent was to bid -- was to purchase 2200  
12 machines in warehouse and 3500 in the field. I have  
13 no knowledge base of whether Heller Capital  
14 differentiated between for -- differentiated between  
15 machines.

16 BY MR. HIGGINS:

17 Q. All right. Besides the discussion you  
18 had with Heller Capital regarding whether or not AVT  
19 was a lessor, do you recall any other discussions  
20 with Heller Capital where AVT was singled out or  
21 evoked?

22 A. I do not.

23 Q. Okay. We can turn now to the debtor's  
24 surcharge motion. And if I say "surcharge motion,"  
25 do you know what I'm referring to?

1 A. I do.

2 Q. And that's the document filed as  
3 Document 926, filed on July 24th, the motion to  
4 surcharge.

5 A. Can you give me the tab again?

6 Q. I don't believe it's one of the tabs in  
7 front of you.

8 MR. HIGGINS: I could be wrong,  
9 Mr. Kissner, but I don't believe it is.

10 BY MR. HIGGINS:

11 Q. We'll avoid getting into the substance  
12 of that document, as I understand it's not before  
13 you, but I'm gonna ask you some questions about your  
14 understanding of that document.

15 Would you be surprised to learn that --

16 MR. MANN: Can you hold on, Mason?

17 MR. KISSNER: I might have a copy of it  
18 with me.

19 MR. HIGGINS: Oh, thank you.

20 MR. MANN: And Mason, when you're  
21 questioning him about the surcharge, where is this  
22 leading, because he was only appearing here today to  
23 focus on the sale?

24 MR. HIGGINS: I understand that. I'm  
25 seeking to talk about how AVT's characterized in

1 that motion. I believe it's relevant to AVT's  
2 importance to the sale itself.

3 MR. MANN: All right. So it's more just  
4 the contents of this document, not what went on when  
5 the surcharge analysis --

6 MR. HIGGINS: I'm sorry. You're very  
7 hard to hear right now.

8 MR. MANN: So are you only questioning  
9 him on the contents of the motion, or actual like  
10 facts of what went along with the surcharge?

11 MR. HIGGINS: These questions are all  
12 about the contents of that motion.

13 MR. MANN: Well, again --

14 You're fine with that? All right.

15 THE WITNESS: Maybe. You can object if  
16 it doesn't make sense.

17 MR. KISSNER: And by the way, this was  
18 marked yesterday as Exhibit 36 to the James  
19 declaration. I don't know, should we mark this as a  
20 separate exhibit for today?

21 MR. MANN: I feel like for organization  
22 sake, let's put it in as a new exhibit so it goes  
23 chronologically of what was talked about in this  
24 deposition.

25 MR. KISSNER: Okay. So by the way, I

1 think that previously we were discussing Tab 25,  
2 which was the sale motion, which I believe the court  
3 reporter has marked as exhibit -- or 27, rather. I  
4 believe the court reporter has marked that as  
5 Exhibit 7.

6 So I think the surcharge motion would be  
7 Exhibit 8 today.

8 (Exhibit 8 marked.)

9 THE WITNESS: Continue, Mason. I'm  
10 ready.

11 MR. HIGGINS: That was Exhibit 28,  
12 right, Mr. Kissner? It's hard to hear the attorneys  
13 right now.

14 MR. KISSNER: This is Exhibit 8.

15 MR. HIGGINS: Thank you. Exhibit 8.

16 BY MR. HIGGINS:

17 Q. All right. Looking at Exhibit 8, I will  
18 refer you to page -- it's marked as page 1 on the  
19 document. It's the second page, the first page  
20 after the caption. I'll refer to that first  
21 paragraph there.

22 A. Are you talking about preliminary  
23 statement, page 1?

24 Q. Above that, that first paragraph there.  
25 Do you see where, about halfway through

1 the first paragraph, the document lists Genesis  
2 Global Holdco, LLC, Enigma Securities Limited and  
3 AVT Nevada, LP, and then describes those entities as  
4 the secured creditors?

5 A. Correct.

6 Q. Why did the debtor's position change  
7 with regards to whether or not AVT was a secured  
8 creditor?

9 MR. MANN: Objection to form.

10 MR. KISSNER: Objection to form.

11 THE WITNESS: My understanding is -- my  
12 understanding is when we marketed the assets, which  
13 included AVT's, Enigma and Genesis, where -- you  
14 know, they give you simple clarification, that AVT  
15 was a secured creditor.

16 So when I went out and marketed, and we  
17 spent the time, the attention maintaining,  
18 marketing, repairing, and all the expenses that are  
19 associated with this from a period that started on  
20 February 7th till the auction date on the second and  
21 post that, that as the auction came about, that AVT  
22 was a secured creditor that filed a proof of claim  
23 with the court and a UCC-1, thus to me, as a seller  
24 of the asset, they were always considered a secured  
25 creditor.



1 I am not going to tell you why the  
2 motions -- I have no -- I have no thought on why the  
3 motions are different.

4 BY MR. HIGGINS:

5 Q. Understood.

6 As you sit there, does the debtor now  
7 dispute that AVT is a lessor in this proceeding?

8 MR. MANN: Objection to form.

9 THE WITNESS: I'm not in a position to  
10 dispute or not dispute right now. The -- the sale  
11 is closed. The sale has been approved, and from  
12 that basis is the -- AVT has received the benefit  
13 of proceeds.

14 BY MR. HIGGINS:

15 Q. I can reask my question for you.

16 So you are sitting here on behalf of the  
17 debtor Cash Cloud, Inc., are you not?

18 A. I am.

19 Q. Okay. So then as you sit there on  
20 behalf of the debtor, do you now dispute that  
21 contrary to Cash Cloud's original position, AVT is a  
22 lessor in these proceedings?

23 MR. MANN: Objection to form.

24 THE WITNESS: I am -- I am saying  
25 clearly that AVT filed a UCC-1 and a proof of claim

1 as a secured creditor, which from all bases, to my  
2 knowledge, makes AVT a secured creditor.

3 BY MR. HIGGINS:

4 Q. And in stating that, is that a stance  
5 you are taking, that AVT is not a lessor?

6 MR. MANN: Objection to form.

7 THE WITNESS: I am not taking a stance.  
8 I am telling you that AVT filed a proof of claim  
9 with a UCC-1, which makes them a secured creditor.

10 BY MR. HIGGINS:

11 Q. So are you not disputing, then, you're  
12 not denying then that AVT is a lessor?

13 MR. MANN: Objection to form.

14 MR. KISSNER: Objection to form.

15 THE WITNESS: I am going to repeat that  
16 AVT filed a UCC-1 as a secured creditor, thus --  
17 thus the assets were sold as a secured creditor.

18 BY MR. HIGGINS:

19 Q. Understood. We can move on now. I have  
20 one more topic for you today and that's the debtor's  
21 warehouses.

22 So am I correct that there are DCMs  
23 stored in three separate warehouses employed by Cash  
24 Cloud?

25 A. No.

1 Q. Okay. I'll ask you to clarify for me.

2 So how many warehouses did the debtor  
3 employ in these proceedings?

4 A. I will estimate, and not opine on this  
5 as factual. My recollection is there's someplace  
6 between 35 and 50 warehouses that have machines in  
7 them across the country. And I would refer you  
8 to -- I would refer you to, probably, Chris  
9 McAlary's declaration originally, but I'm not quite  
10 sure, but there is absolutely more than three.

11 Q. Okay. And I may have asked that in an  
12 unclear way and I do apologize for that.

13 Can we agree, though, that the debtor  
14 has employed three companies to store its DCMs in  
15 warehouses around the country?

16 A. I'm not -- that was in the preview of  
17 Tanner James.

18 Q. And you have -- and you have no  
19 knowledge of that declaration contents?

20 A. I am not -- I did not read Tanner  
21 James's declaration and I am -- he has been  
22 responsible for the logistics of this company, so I  
23 will not speak on things that I -- are not factually  
24 think -- know are a hundred percent accurate.

25 Q. So you don't have any -- strike that.

1 So you're not prepared today to talk  
2 about the debtor's operations with regards to  
3 storing the DCMs it operates or warehouses?

4 A. I can tell you that, as I said earlier,  
5 the debtor basically has a logistics of about 35 to  
6 50 places to store assets. My -- I'm here to speak  
7 about the sale process and the auction. As I said,  
8 you can -- as you had yesterday, you had Tanner  
9 James you could have spoken about the operations and  
10 the logistics. So I would refer you to Tanner James  
11 if you would like to talk about the logistics which  
12 is part of the surcharge motion.

13 Q. Fair. And I do appreciate that clarity  
14 of what you're going to talk about today.

15 With that being said, I have no further  
16 questions for you. Thank you for your time.

17 A. Mason, nice to meet you. Thank you for  
18 yours.

19 EXAMINATION

20 BY MR. KISSNER:

21 Q. Okay. I'm going to ask you some more  
22 questions, if that's okay, Mr. Moses.

23 Before, you were talking with  
24 Mr. Higgins about what has been marked as Exhibit 7,  
25 Tab 27 in your binder -- you have it in front of

1       you -- which was the sale motion.

2           A.           27?

3           Q.           Yeah. You're there. You got it.

4           A.           This one (indicating)?

5           Q.           Yep.

6           A.           Document 714?

7           Q.           Yes, sir.

8                       Do you recall Mr. Higgins asked you if  
9       Fox Rothschild drafted the APA that was attached as  
10      an exhibit to this?

11          A.           Yeah. Yes, the debtor's counsel and --

12          Q.           Drafted the APA document, that was your  
13      testimony before?

14          A.           Yeah.

15          Q.           Can you turn to -- going by the page  
16      numbers in the upper right-hand corner -- 51 of 66.

17          A.           We're there.

18          Q.           Section 9.09, and can you go down to  
19      subparagraph B. And could you read that to yourself  
20      and let me know when you're done.

21          A.           You said 9.09, sir?

22          Q.           Yep. And then subparagraph B.

23          A.           Okay.

24          Q.           What do you understand that sentence to  
25      mean?

1 A. Nothing.

2 Q. Do you understand that to mean that this  
3 agreement was drafted by both parties to the  
4 agreement?

5 A. I don't know the definition of  
6 "parties."

7 Q. Fair enough.

8 If I were to tell you the parties to  
9 this agreement were Heller Capital and Coin Cloud,  
10 would that sound familiar to you?

11 A. That would --

12 MR. MANN: Objection to form.

13 THE WITNESS: That would seem logical.

14 BY MR. KISSNER:

15 Q. So would you understand this sentence to  
16 suggest that this agreement was drafted by Heller  
17 Capital and the debtor?

18 MR. MANN: Objection to form.

19 THE WITNESS: This agreement was, I  
20 would assume, drafted by all parties involved.

21 BY MR. KISSNER:

22 Q. Okay. So does that refresh your  
23 recollection as to who drafted this APA?

24 A. As I said is, I -- I did not do the  
25 drafting of the APA --

1 Q. Correct.

2 A. -- that my assumption is parties  
3 involved drafted it, but I have no knowledge of who  
4 drafted it together.

5 Q. Okay. But it would be fair to say then  
6 that this wasn't drafted by Fox Rothschild alone,  
7 but perhaps in concert with advisors to Heller,  
8 fair?

9 A. There is typical -- there is typical  
10 drafting between parties, correct.

11 Q. So your understanding would be that this  
12 was drafted by both parties?

13 A. My understanding is that the debtor  
14 would take -- would be the initial drafter and then  
15 work with the purchaser.

16 Q. Okay. Great. That was all I had on  
17 that.

18 Let's go back to -- we were starting to  
19 talk this morning before lunch about the sales and  
20 marketing process, and then this afternoon we're  
21 going to talk about -- a little more about that  
22 process and then the auction.

23 A. Sure.

24 Q. Before we do, before we had taken a  
25 break for about an hour or so, you said that you had

1 a call during that break?

2 A. I did.

3 Q. And that was on a different matter, not  
4 on Cash Cloud?

5 A. That's correct.

6 Q. Other than that call, did you have any  
7 other conversations during your break?

8 A. That was my break. You're not privy to  
9 my break.

10 Q. That's fair.

11 What I'm trying to get at is did you  
12 have any conversations about the substance of your  
13 testimony today during the break?

14 A. I spoke to many different parties during  
15 the break.

16 Q. Right. But did you have any  
17 conversations regarding the substance of your  
18 testimony today during your break?

19 A. I spoke to Paul Huygens and mentioned  
20 that I was testifying.

21 Q. Did you talk about the content of your  
22 testimony today?

23 A. Only that it was on pre-sale process.

24 Q. Okay. All right. We might come back to  
25 that later.



1 A. Okay.

2 Q. All right. So as part of your role with  
3 Province in this engagement, you assisted with the  
4 sales and marketing process for Coin Cloud's assets;  
5 fair to say?

6 A. Absolutely.

7 Q. Would you say you assisted or you  
8 managed the process?

9 A. I managed the process.

10 Q. Did you speak with potential purchasers  
11 as part of managing that process?

12 A. I did.

13 Q. Do you recall about how many you spoke  
14 to?

15 A. Sure. We sent a teaser out to about 48  
16 different parties.

17 Q. Okay.

18 A. We signed, if I recall correctly,  
19 initially 15 -- at least 15 NDAs that were just  
20 specific to the sale process. Sometimes some of  
21 those people would overlap who looked at the  
22 financing of the DIP, who also might have been  
23 interested in the assets, so there might have been  
24 an -- additional parties that we spoke to above the  
25 15 that were under NDA, because they were already

1 involved.

2 Q. Would you say that those parties, as you  
3 phrased it, above the 15 under NDA, would that be  
4 captured in the 48 parties, though --

5 A. They would.

6 Q. -- that you talked to? Okay.

7 And we're not going to go through 15  
8 different conversations, so don't worry about that.

9 A. I'm not.

10 Q. But when speaking with potential  
11 purchasers, what was generally the content of those  
12 conversations? What were those conversations like?

13 A. Every conversation is different.

14 Q. Sure.

15 A. We go -- and it depends. With most  
16 purchasers of assets, you have multiple  
17 conversations, so it's an iterative process. Let's  
18 lay this out.

19 So the first thing you have to always do  
20 with the purchasers, once they get the teaser, is  
21 they have to express interest. The first step of  
22 that process is then let's get them to sign a NDA so  
23 you can have more open conversations besides  
24 describing what you're actually selling. Once you  
25 get that NDA, you usually have a quick -- then you

1 have a conversation.

2 Either myself or management or other  
3 people who are experts would usually be on the phone  
4 with me. Sometimes we start myself. Sometimes it's  
5 myself and a couple of my other colleagues, where we  
6 start to answer questions for them about the assets,  
7 the transactions, what we're selling, access to  
8 diligence, VDRs, how many -- how competitive the  
9 process is, you know, what are the -- how are you  
10 looking to buy? Is this a 363? Is it a plan  
11 sponsor?

12 So everything from structure to business  
13 to anything else that would be on the buyer's mind  
14 would be in those initial conversations.

15 Q. Okay. And so you had at least 15  
16 initial conversations; fair to say?

17 A. Estimated.

18 Q. And probably many multiples of that in  
19 total conversations, right?

20 A. That's correct.

21 Q. Going back to your earlier answer when  
22 you were sort of describing the blocking attack on  
23 those calls, you said one of the things that you  
24 might discuss is 363 sale, plan sponsorship or other  
25 type of transaction; is that right?

1 A. That is correct.

2 Q. Do you recall ever telling any of the  
3 purchasers -- sorry, strike that.

4 Do you recall telling any of the  
5 potentially interested parties that you spoke to  
6 whether the debtor had a preferred transaction  
7 structure?

8 A. We've never talked about a preferred  
9 transaction structure. We referred them to the DIP  
10 documents which had milestones that effectively  
11 described different processes for transactions, but  
12 we have never -- we don't -- Province doesn't have a  
13 preference. We will never have a preference on  
14 transaction structure. What we have a preference on  
15 is for all -- the estate and all creditors is  
16 getting the highest and best value for all  
17 creditors. Hard stop, that's it.

18 So we have no preference on fees. We  
19 have no judgment based on process. We take our  
20 fiduciary responsibilities seriously and that's how  
21 we approach every conversation.

22 Q. Okay. You said a phrase in there,  
23 "highest and best." What does that mean?

24 A. We want to try to get the highest value  
25 we can for all creditors.

1 Q. Does "highest and best" necessarily mean  
2 highest purchase price?

3 MR. MANN: Object as to form.

4 THE WITNESS: I think you're  
5 characterizing a complicated question with a  
6 simple -- with a simple statement, and I don't think  
7 that's correct. When you sell an asset, there are  
8 multiple things. Highest price could be one, form  
9 of consideration could be another, whether it's --  
10 maybe it's going to be -- do they have financing?  
11 Do we think they can close? Do they have diligence?  
12 So when you think about the mosaic of highest price,  
13 highest price includes all those things in order to  
14 have a successful transaction. It's not just a  
15 quantitative measure. It can't be.

16 BY MR. KISSNER:

17 Q. So you would say it's a qualitative  
18 assessment?

19 A. No, it's a quantitative -- like I said,  
20 it's a mosaic. You're trying to get to the highest  
21 price that will have the ability to close.

22 Q. Okay. Why don't we go to Tab 10 in your  
23 binder. I don't think we've marked this one yet so  
24 I think this will be Exhibit 9.

25 (Exhibit 9 marked.)

1 THE WITNESS: That's the one-pager?

2 BY MR. KISSNER:

3 Q. Yeah.

4 Do you recognize this document?

5 A. I do.

6 Q. Can you tell me what it is?

7 A. Bid deadline of April 12th.

8 Q. Would it be fair to say then that this  
9 was prepared on or about -- oh, sorry. Strike that.

10 Do you know when this document was  
11 filed?

12 A. I do not.

13 Q. Can you --

14 A. Other than what it reads up top,  
15 March 30th.

16 Q. So would you agree that this document  
17 was likely prepared on or about March 30th?

18 A. I don't know when it was prepared.

19 Q. Okay. Could you describe to me, in your  
20 own words, what you understand this notice of bid  
21 deadline to be?

22 A. This is a very simple notice that goes  
23 out to all parties in a public forum that basically  
24 identifies the timeline during a sale process or a  
25 plan sponsor process; in this particular case, where

1 we were filing a toggle plan of April 12th as a date  
2 that we would like, initially, term sheets to be  
3 submitted.

4 Q. In your prior experience advising  
5 clients in connection with 363 sales, which we  
6 discussed before, is it typical for a bid deadline  
7 notice like this to be filed publicly?

8 A. Yes.

9 Q. And you said before this was prepared  
10 and filed apparently on or about March 30th, 2023?

11 A. Uh-huh.

12 Q. Do you recall if, around March 30th,  
13 2023, the debtor was in communications with  
14 potential bidders interested in serving as a  
15 stalking horse?

16 A. Not on March 30th. We were in  
17 communications with the eventual stalking horse bid,  
18 but they did not file a term sheet until April 7th.

19 Q. Were you talking with other parties  
20 potentially interested in serving as a stalking  
21 horse?

22 A. We were talking to all parties about  
23 being the stalking horse. Everyone we spoke to, we  
24 had told them they have an equal opportunity, since  
25 the teaser went out on March 1st, if you have the --

1 if you have the right bid and the right structure to  
2 be the initial stalking horse, everyone has an equal  
3 opportunity.

4 Q. How advanced were those discussions, if  
5 you recall?

6 MR. MANN: Objection to form.

7 THE WITNESS: Can you elaborate on the  
8 question?

9 BY MR. KISSNER:

10 Q. Sure. You said that you had discussions  
11 with all parties, since March 1st, about the  
12 potential to serve as a stalking horse, correct?

13 A. Uh-huh.

14 Q. And just curious if you recall how  
15 advanced those discussions were?

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. How far along were you in those  
19 discussions? I'll rephrase.

20 A. Every party was different, is -- at a  
21 different point in time.

22 Q. That's fair.

23 By March 30th, had you selected a  
24 stalking horse?

25 A. We can't select a stalking horse without



1 a term sheet.

2 Q. And by March 30th, had you received a  
3 term sheet to serve as a stalking horse from any  
4 party?

5 A. My recollection was April 7th was the  
6 first term sheet, but I'm happy to go back for you  
7 through the records to figure out if it came in  
8 earlier, but my recollection is April 7th.

9 Q. Okay. That's fine. We'll probably get  
10 there today, so no need.

11 Now, this morning you were telling me a  
12 little bit about what a stalking horse is. Do you  
13 remember that?

14 A. I do.

15 Q. And would it be a fair summary of your  
16 testimony that a stalking horse acts as the initial  
17 bidder in the process?

18 MR. MANN: Objection to form.

19 THE WITNESS: Yeah. The stalking horse  
20 is the initial bidder that typically sets a floor,  
21 to try to create a competitive environment to get a  
22 higher bid in the process.

23 BY MR. KISSNER:

24 Q. In your experience, does having a  
25 stalking horse send a signal to the market?

1 MR. MANN: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. KISSNER:

4 Q. What kind of a signal does it send?

5 A. I think it sends a signal that this is  
6 going to be a competitive process.

7 Q. Now, does this notice that was filed  
8 with the court, does this mention a proposed  
9 stalking horse bidder for the debtor's assets?

10 A. No.

11 Q. Do you think that sent a signal to the  
12 market?

13 A. No.

14 Q. You don't think that somebody reading  
15 this would -- strike that.

16 A. This is a standard bid deadline. It  
17 tells -- it basically incentivizes buyers to have  
18 their term sheets in sooner, thus creating a  
19 competitive environment in order to try to realize  
20 higher values. Very standard in the business.  
21 Happens every 363 process.

22 Q. Would you say that it's standard for bid  
23 deadline notices such as this to announce a stalking  
24 horse?

25 A. No. I don't think it's standard.

1 Q. Okay. We're going to turn to Tab 45 in  
2 your binder and I'm going to ask that that be marked  
3 as Exhibit 10.

4 (Exhibit 10 marked.)

5 MR. KISSNER: And by the way, is  
6 everybody able to hear us?

7 (Interruption in proceedings.)

8 BY MR. KISSNER:

9 Q. All right. Mr. Moses, do you recognize  
10 Exhibit 10?

11 A. I do not.

12 Q. Could you review it?

13 A. Okay.

14 Q. Can you tell me what it appears to be?

15 A. It says, "Term sheet for Cash Cloud  
16 plan" of re-org.

17 Q. What does that mean to you?

18 A. Honestly, it doesn't mean a lot. This  
19 looks like it is a general, early stage process term  
20 sheet of trying to figure out structure of a plan.

21 Q. A plan for reorganization?

22 A. That's what it says.

23 Q. Did you -- oh, go ahead.

24 A. No, that's it. That's what it says.

25 Q. Did you draft this document?

1 A. I did not.

2 Q. Do you know who did?

3 A. I do not.

4 Q. Do you have a guess?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't guess.

7 BY MR. KISSNER:

8 Q. But if you had to?

9 MR. MANN: Objection to form.

10 THE WITNESS: I don't guess.

11 BY MR. KISSNER:

12 Q. Do you know about when this -- strike  
13 that.

14 Do you know on or about which date this  
15 document was created?

16 A. I only know exactly what you just said.

17 Q. Okay. Well, if we turn to page 1, which  
18 is the cover e-mail, and if you look up at the top  
19 at the "sent" line, there's a date there. Could you  
20 read that?

21 A. April 6th.

22 Q. Does that refresh your recollection as  
23 to when this document was created?

24 A. No.

25 Q. No? Okay.

1 And before, you said that you didn't  
2 know who drafted this document?

3 A. I do not know -- I will not say who  
4 authored this document because I do not know.

5 Q. Do you have any recollection if this was  
6 approved by the DIP lender?

7 A. I don't have any recollection.

8 Q. Do you have any recollection if this was  
9 approved by any potential bidder for the debtor's  
10 assets?

11 A. I have no recollection.

12 Q. Okay. Do you have an understanding of  
13 what the purpose of this document was?

14 MR. MANN: Objection to form.

15 THE WITNESS: I have no knowledge base  
16 of what the purpose was.

17 BY MR. KISSNER:

18 Q. Okay. Well, before, you said this  
19 appears to be a term sheet for a plan of  
20 reorganization, correct?

21 A. But it's a term sheet for plan -- but  
22 it's a early, early draft, it looks like.

23 Q. That's fair.

24 A. It looks like work product.

25 Q. Would it be fair to characterize this as

1 a proposal?

2 MR. MANN: Objection to form.

3 THE WITNESS: No.

4 BY MR. KISSNER:

5 Q. How would you characterize it, then?

6 A. Early work product.

7 Q. Turning back to the first page of the  
8 cover e-mail, can you tell me who this was sent by?

9 A. Paralegal for Fox Rothschild.

10 Q. Okay. And you don't have to read them  
11 into the record, but can you look at the individuals  
12 listed in the "to" field?

13 A. Sure.

14 Q. And let me know when you're done.

15 A. I am done.

16 Q. Can you tell me if you recognize any of  
17 those names?

18 A. I do.

19 Q. Can you tell me -- for any that you do  
20 recognize, can you tell me who you understand them  
21 to be?

22 A. I understand that these are lawyers for  
23 the committee. It looks to me this is the  
24 consultation party group.

25 Q. And who are the consultation parties?

1           A.           Enigma, Genesis, the UCC and the DIP  
2           lender -- whether he's formally in it, the  
3           consultation, but the DIP lender is always a  
4           consultation party.

5           Q.           And "UCC," you mean the committee,  
6           correct?

7           A.           I do.

8           Q.           And where did you get that phrase  
9           "consultation parties" from?

10          A.           That's what that group is always  
11          referred to me as.

12          Q.           Do you have any understanding as to why  
13          a paralegal from Fox Rothschild would be sending a  
14          term sheet for a plan of reorganization to the  
15          consultation parties?

16                      MR. MANN: Objection to form.

17                      THE WITNESS: I do not.

18          BY MR. KISSNER:

19          Q.           And turning back to the term sheet  
20          itself, do you see the top row of the term sheet?  
21          Third column where it says "proposed plan  
22          treatment," do you see that?

23          A.           Uh-huh. Okay.

24          Q.           Do you have an understanding as to why  
25          it would say "proposed plan treatment" there?

1 MR. MANN: Objection to form.

2 THE WITNESS: As I repeatedly have said,  
3 it looks like a working draft.

4 BY MR. KISSNER:

5 Q. Okay. I guess what I'm trying to get at  
6 is you said before that this -- it would be unfair  
7 to characterize this as a proposal, right? But this  
8 was a document sent by the debtor to creditors that  
9 included proposed plan treatment, fair?

10 A. That is correct.

11 Q. So I guess I'd ask, do you still think  
12 it would be unfair to characterize this as a  
13 proposal?

14 MR. MANN: Objection to form.

15 THE WITNESS: What I'm saying is that  
16 this looks like an early draft to begin to gestate a  
17 plan. The difference between a proposal and a  
18 working draft, to begin to put something -- ideas  
19 together versus a formal proposal. They are  
20 massively different things.

21 BY MR. KISSNER:

22 Q. Can you tell me a little bit about how  
23 those things would differ then?

24 A. This looks like a draft so people can  
25 begin to think through what a plan of re-org would



1 look like.

2 Q. Sure. But you said that an early draft  
3 is different from a formal proposal, so I guess I'm  
4 just trying to better understand what that  
5 difference would be.

6 A. Well, it would be characterized as a  
7 formal proposal. This doesn't look like it's  
8 characterized that to me. I have not seen this in  
9 this form before, but as a characterization it  
10 doesn't look like a formal proposal to me.

11 Q. Do you think -- strike that.

12 Do you think the distinction between a  
13 early working draft and a formal proposal is  
14 significant?

15 MR. MANN: Objection to form.

16 THE WITNESS: Yes.

17 BY MR. KISSNER:

18 Q. Could you describe what the significance  
19 of that distinction is?

20 A. An early draft is just an early draft,  
21 subject to change. Every early draft is subject to  
22 material change.

23 Q. Would you say, by contrast, a formal  
24 proposal is less subject to change?

25 A. A formal proposal is basically -- is

1 something that has been vetted and is being proposed  
2 formally. An early draft is something that's  
3 subject to material change based on status of the  
4 case.

5 Q. I see.

6 So the distinction that you're drawing  
7 is that one is less firm than the other; is that  
8 fair?

9 MR. MANN: Objection to form.

10 THE WITNESS: No. No. I'm drawing  
11 exactly what I said to you, that there is a  
12 difference in drafts and early proposals and early  
13 gestation of ideas in a case, than formal proposals.

14 BY MR. KISSNER:

15 Q. Okay. Maybe we'll just agree to  
16 disagree as -- on all of that, but --

17 A. That's fine.

18 Q. -- it's enlightening.

19 Do you know that under -- and I'll call  
20 it a draft because I'm not -- that's fine, because I  
21 don't want to get into an argument about what it is.

22 Under this draft, do you know how much  
23 Enigma would have received on account of its claim?

24 A. I do not.

25 Q. Why don't we look at page 2 of the chart

1 at the very bottom. And do you see where it says  
2 "Enigma secured claim"? And can you read that to  
3 yourself and let me know when you're done.

4 A. I am not going to calculate what Enigma  
5 would receive based on this text.

6 Q. I'm not asking to you calculate  
7 anything, I'm just asking you to read it to yourself  
8 and let me know when you're done.

9 A. Okay. I'm aware of what this is.

10 Q. Can you tell me what you understand this  
11 to mean?

12 A. This looks like Enigma is going to  
13 receive, based on the language here, under a plan of  
14 reorganization, take-back paper that has certain  
15 characteristics associated with them including early  
16 call dates.

17 Q. Okay. Let's break that down a little  
18 bit.

19 When you say "take-back paper," what  
20 does that mean?

21 A. Typically in a restructuring, a form of  
22 consideration for a creditor could be another form  
23 of debt.

24 Q. So a new debt?

25 A. Take-back paper -- yes. A new security

1 is a typical form of take-back paper.

2 Q. In a 363 sale, would it be typical for  
3 somebody to get take-back paper or no?

4 A. A 363 sale is not a plan of  
5 reorganization. They are two separate and  
6 distinct --

7 Q. Right.

8 A. -- characteristics --

9 Q. Sorry, I did not mean to cut you off.

10 A. In a 363, you're selling assets. In a  
11 plan, you're reorganizing a company.

12 Q. So it would not be typical on a 363 for  
13 there to be take-back paper, right?

14 A. That's correct.

15 MR. MANN: Objection to form.

16 THE WITNESS: But it can happen.

17 BY MR. KISSNER:

18 Q. And then you said "early call dates."  
19 Can you explain what that means?

20 A. That means that there are periods of  
21 time -- every security that's a debt security has a  
22 call schedule. It's that simple, they just have a  
23 call schedule.

24 Q. Can you elaborate on that?

25 MR. MANN: Objection to form.

1 THE WITNESS: Not really.

2 BY MR. KISSNER:

3 Q. I guess, what does it mean to call, in  
4 that context?

5 A. "Call" means a security can be taken out  
6 at a certain point in time at a certain price.

7 Q. So repaid?

8 A. Correct.

9 Q. Do you have any idea -- strike that.  
10 Do you know the amount of take-back  
11 paper Enigma would have received under this draft?

12 MR. MANN: Objection to the form.

13 THE WITNESS: It doesn't specify, but it  
14 does say that "receive the Enigma secured note in  
15 the amount of the Enigma secured claim." Reading  
16 text simply, it says "the amount of secured claim."

17 BY MR. KISSNER:

18 Q. Do you understand that to suggest that  
19 there would be a reduction in principal from the  
20 amount owed to Enigma prior to the case?

21 MR. MANN: Objection to form.

22 THE WITNESS: That's not what it says  
23 here.

24 BY MR. KISSNER:

25 Q. Okay. But pursuant to a early call

1 schedule, if it was repaid early, it would be repaid  
2 for less than the principal amount, fair?

3 MR. MANN: Objection to form.

4 THE WITNESS: Correct.

5 BY MR. KISSNER:

6 Q. Do you have any idea what happened with  
7 this draft after it was shared with the parties?

8 A. Yes.

9 Q. Could you just explain to me or describe  
10 it to me?

11 A. The April 7th -- I think, or April 6th  
12 when you see this draft, was early stages in the  
13 operational history of the company from the  
14 advisor's perspective. Over a series of time we  
15 have realized that the operations of this company  
16 were significantly worse than we could have actually  
17 thought they would be.

18 During that time period, they lost at  
19 least two licenses, Florida and New Mexico, which  
20 had to be shut down. We had significant software  
21 problems. We had revenue go from weekly 5 million  
22 to like two and a half, basically 50 percent of  
23 reduction. We were hemorrhaging cash.

24 And it is my -- I don't know why this  
25 was -- effectively, this particular draft, one way,

1 but it became a lot harder for the company to  
2 support additional debt capacity in a  
3 reorganization, you know, as time went on.

4 So I don't know why particularly this  
5 went away, but I will tell you that, as part of our  
6 process of evaluation, things change in this company  
7 pretty quickly, which then cause, as I said to you,  
8 draft term sheets to -- always can materially  
9 change.

10 Q. Okay. You said that things change  
11 pretty quickly, right?

12 A. Uh-huh.

13 Q. Do you know where -- strike that.

14 Do you know approximately when things  
15 began to change pretty quickly?

16 A. I can't put an exact date on it for you,  
17 to be honest.

18 Q. Do you know if it was in April of 2023?

19 A. We -- in April, we were still -- we were  
20 still finishing the plan in terms of the company's  
21 operational outlook. So I can tell you that it was  
22 not -- we did not have a firm opinion, I did not --  
23 on April 6th of where we were going to end up as a  
24 company at that point.

25 Q. Had things changed pretty quickly by

1 May 2023?

2 A. I'd need to go back and check the date  
3 for you on the software issue and on the license  
4 issue. I'm happy to get back to you. I do not know  
5 those dates off the top of my head.

6 Q. Fair enough.

7 And I apologize, when you said "the  
8 software issue," to what does that refer? And I  
9 might have just forgotten.

10 A. The CCOS has had significant operational  
11 problems for many years --

12 Q. Okay.

13 A. -- So we continuously had operational  
14 problems with CCOS.

15 Q. Can you describe some of those?

16 A. Not -- basically not working with  
17 OptConnect correctly, you know, having basically  
18 software issues there; not recognizing the cash  
19 correctly; not -- you know, basically not working  
20 well at the actual DCM basis. So these were all  
21 things that Chris was working on continuously to  
22 improve.

23 Q. We'll talk about those in a sec.

24 Do you know if things had changed by  
25 June 2023?



1 A. Yes.

2 Q. Okay.

3 A. Things continued to get worse from April  
4 through the auction date. Every -- every single  
5 phase of that, things would continue to decelerate,  
6 not accelerate.

7 Q. Who's OptConnect?

8 A. OptConnect is the telecom provider.

9 Q. So they provide Internet access to the  
10 DCMs?

11 A. Yeah.

12 Q. And then you mentioned that one of the  
13 issues that you were having is the machines were not  
14 correctly recognizing cash; is that correct?

15 A. That's correct.

16 Q. To your knowledge, what does that mean?  
17 What's the consequence of not recognizing cash?

18 A. Effectively, there are risks knowing  
19 what your current cash balances are in terms of  
20 transaction volume. So when dollars go in and they  
21 recognize \$80 instead of a hundred, you know, your  
22 revenue's going to be lower when you reconcile.

23 Q. So all of these issues that we've been  
24 talking about, did that, in your opinion, impact the  
25 ability to consummate a plan of reorganization?

1 A. No.

2 Q. No. Okay.

3 All right. We're going to go back to  
4 Tab 11 in your binder, which was marked earlier as  
5 Exhibit 6.

6 And I believe you talked about this  
7 document with Mr. Higgins for a bit, so I'm going to  
8 try and not repeat anything that he said, but if I  
9 do, please don't hold it against me. Okay?

10 A. Okay. I think I have the right  
11 document.

12 Q. And it's document number 392 at the top.

13 A. Is that the engagement letter, again?

14 MR. MANN: You're on Tab 9. Go to --

15 MR. KISSNER: Oh, yeah, Tab 11, I'm  
16 sorry.

17 THE WITNESS: You said 6, yeah. Sorry.

18 BY MR. KISSNER:

19 Q. It's Tab 11, Exhibit 6. It's a screwy  
20 system.

21 A. Okay. No problem.

22 Q. And can you remind me, what was this  
23 document, again?

24 A. Auction and bidding procedures, the bid  
25 procedures.

1 Q. And this was filed with the bankruptcy  
2 court, correct?

3 A. It is.

4 Q. And in your experience advising on 363  
5 sale processes, it's typical for a motion like this  
6 to be filed with the bankruptcy court, fair?

7 A. Bid procedures are normal course of  
8 business.

9 Q. And I won't make you read the whole  
10 thing, but I'm just going to ask, if you recall,  
11 does this document indicate that there was a  
12 stalking horse for the debtor's assets?

13 A. I don't recall.

14 Q. Why don't we turn to page 2, which in  
15 the upper right-hand corner it says "page 3 of 51."

16 A. Yes.

17 Q. And can you look at the chart in the top  
18 row and read to me what it says?

19 A. "Deadline for selecting designated  
20 stalking horse."

21 Q. And what's the date next to that?

22 A. April 21st.

23 Q. And on or about which date was this  
24 document filed?

25 A. Why don't you just enter it for the

1 record, 4/7/23.

2 Q. Okay. So does that refresh your  
3 recollection as to whether or not this document  
4 indicated that a stalking horse had been selected?

5 MR. MANN: Objection to form.

6 THE WITNESS: My recollect -- I did  
7 not -- we did not have a stalking horse selected in  
8 this document.

9 BY MR. KISSNER:

10 Q. But a stalking horse was eventually  
11 selected, right?

12 A. Yes.

13 Q. Do you know about when that was?

14 A. I don't recall.

15 Q. But it was after the debtor sought  
16 approval of its bid procedures, right?

17 A. I don't recall.

18 Q. Well, we said that these were the bid  
19 procedures that were filed with the court, right,  
20 and they were filed on April 7th?

21 A. Yes.

22 Q. And the deadline to select a stalking  
23 horse was April 21st.

24 So would it be fair to say that the  
25 debtor did not seek approval of the stalking

1 horse -- strike that.

2 Is it fair to say that the debtor had  
3 not selected a stalking horse at the time the bid  
4 procedures motion was filed?

5 A. I don't recall the timing.

6 Q. Okay. Do you have reason to disagree  
7 with the statement that the debtor did not select a  
8 stalking horse until after the bid procedures were  
9 filed?

10 MR. MANN: Objection to form.

11 THE WITNESS: I don't recall the timing,  
12 no matter how many times you say the same sentence.

13 BY MR. KISSNER:

14 Q. I guess I'm a little confused, because  
15 we have the bid procedures motion here, right?

16 A. All I'm saying is I don't recall the  
17 exact date of the stalking horse selection.

18 Q. That's fair.

19 And I guess --

20 A. You're asking me whether it was done  
21 before the bid procedures, after the bid procedures  
22 or before the 21st. I am telling you I don't recall  
23 the exact date of the selection of the stalking  
24 horse.

25 Q. Got it. I think I understand.

1                   So you're saying it could be that the  
2     debtor had selected a stalking horse, but just  
3     didn't announce it in this motion?

4                   MR. MANN: Objection to form.

5                   THE WITNESS: I am not saying that at  
6     all. I am just saying I don't recall.

7     BY MR. KISSNER:

8           Q.        Okay. In your experience advising  
9     parties in connection with 363 sales, is it typical  
10    for a stalking horse to be selected by the time the  
11    bid procedures are filed?

12           MR. MANN: Objection to form.

13           THE WITNESS: Typically, it is after the  
14    bid procedures, but every -- every situation is  
15    different.

16    BY MR. KISSNER:

17           Q.        Okay. Let's turn to Tab 12, which I'm  
18    going to ask the court reporter to mark as  
19    Exhibit 11.

20                   (Exhibit 11 marked.)

21    BY MR. KISSNER:

22           Q.        Do you recognize this document?

23           A.        I do. It's my declaration in support of  
24    debtor's -- approving auction and bidding  
25    procedures.

1 Q. So fair to say that you're familiar with  
2 this document?

3 A. I did. I am.

4 Q. Let's turn to the second page.

5 A. I am on the second page.

6 Q. Could you just read paragraph 4 to  
7 yourself real quick and let me know when you're  
8 done.

9 A. I am done, sir.

10 Q. And before, you were -- I believe you  
11 mentioned a teaser that had gone out. Is this the  
12 teaser that you were talking about before?

13 A. Yes.

14 Q. Okay. And so Province had already sent  
15 out a teaser to the market by the time this  
16 declaration was filed; fair to say?

17 A. If I remember correctly, March 1st.

18 Q. Okay. Great.

19 Let's turn to Tab 9, which we'll mark as  
20 Exhibit 12.

21 (Exhibit 12 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. Sorry. I might be on 8. Oh, the  
25 teaser?

1 Q. Yeah.

2 Do you recognize it?

3 A. I've seen this document.

4 Q. Okay. And is this the marketing teaser  
5 that's referred to in your declaration and that you  
6 were talking about before?

7 A. This is the teaser we sent out on  
8 March 1st.

9 Q. And if you look at page 3, it's the page  
10 that says "Executive Summary" at the top.

11 A. Sure.

12 Q. We'll stay there.

13 But before we talk about it, just to be  
14 sure, did you create this document?

15 A. Tanner James created this document, and  
16 the rest of the Province staff.

17 Q. Okay. Do you have any reason to believe  
18 that this document isn't true and accurate?

19 A. This document relies a hundred percent  
20 on company books and records and testimony of Chris  
21 McAlary. This was not a document that was created  
22 by Province -- by their information. This is books  
23 and records of the company and Chris McAlary.

24 Q. But subject to that caveat, at the time  
25 this was prepared you didn't have any reason to



1 believe that anything in here was false, right?

2 A. As I've said, this was prepared by Chris  
3 McAlary and the company, with the help, assistance  
4 of Province, based on their books and records.

5 Q. Sure. And that's all in this disclaimer  
6 here.

7 I'm just making sure, just as  
8 professionals, that you didn't have any knowledge --  
9 actual knowledge, at the time, that anything in here  
10 was incorrect?

11 A. As I've said to you, we relied on Chris  
12 McAlary and the books and records of the company.

13 Q. I understand that.

14 But do you understand that there's a  
15 distinction between relying on information and  
16 having actual knowledge that information may or may  
17 not be correct?

18 A. Again, we relied on the books and  
19 records of the company and Chris McAlary.

20 Q. Did you have actual knowledge, at the  
21 time, that the books and records and Chris McAlary  
22 were incorrect?

23 MR. MANN: Objection to form.

24 THE WITNESS: Again, we relied on the  
25 books and records provided by Chris McAlary and the

1 company.

2 BY MR. KISSNER:

3 Q. We can do this all day until you answer  
4 the question.

5 A. I did.

6 MR. MANN: It's asked and answered.

7 THE WITNESS: It's asked and answered.

8 BY MR. KISSNER:

9 Q. Okay. I just don't understand why you  
10 can't tell me if you had actual knowledge, at the  
11 time that this was created, that anything in here  
12 was false, that's all.

13 A. What we are telling you is, as every  
14 advisor, we are relying on information from books  
15 and records of the company. We are also relying on  
16 the CEO Chris McAlary. That is what goes into this  
17 document.

18 Q. Okay. Do you understand the distinction  
19 between relying on documents and having actual  
20 knowledge of the truth of the documents?

21 A. Everything that goes in is relied upon  
22 by a third party. We can do this all day, but we  
23 rely on books and records of -- and the CEOs to  
24 basically create all these documents.

25 Q. You said you thought this was created

1 around March 1st?

2 A. No. I told you this was sent out as a  
3 teaser around March 1st.

4 Q. Do you know when it would have been  
5 created?

6 A. Prior to that. Since the beginning of  
7 the case, whenever we -- I actually don't know the  
8 date that it started. But prior to that, obviously.

9 Q. And in your prior declaration, I think  
10 it says that this was sent to approximately 48  
11 parties, fair?

12 A. Fair.

13 Q. If you look at the bottom of page 3, the  
14 lower right-hand corner, and it's the paragraph in  
15 bold beginning "initially," and just read it to  
16 yourself.

17 A. Uh-huh.

18 Q. And then do you see the sub bullet  
19 beneath that, beginning "as of February 23rd," do  
20 you see that?

21 A. I do.

22 Q. So would it be fair to say that this  
23 document was likely created in or after  
24 February 2023?

25 A. It is likely it was created in or after

1 February '23.

2 Q. Okay. And then you've read it before to  
3 yourself. Could you just read for the record the  
4 sentence starting "initially"?

5 A. "Initially, Coin Cloud is seeking a plan  
6 of reorganization co-sponsor willing to provide exit  
7 financing in the form of new equity capital or debt  
8 refinancing, but is open to alternative proposals."

9 Q. In your own words, what do you  
10 understand that sentence to mean?

11 A. It means that, at this point in time of  
12 the case, the DIP lender had certain milestones.  
13 Those milestones, basically, in the beginning, gave  
14 us time to try to reorganize the company as a going  
15 concern. This is basically signaling to the  
16 marketplace that we are trying to reorganize as a  
17 going concern with a plan sponsor. Clearly, if  
18 other parties who are interested in this company  
19 have other ideas, we will obviously consider  
20 everything.

21 Q. So at the time you sent this out, on or  
22 about March 1st, the company was still pursuing a  
23 plan sponsorship transaction?

24 A. The CEO, Chris McAlary, was hoping to  
25 reorganize his company and we were working toward

1       trying to get a plan of reorganization together.

2           Q.       Did there come a time that you stopped  
3       attempting to pursue a plan of reorganization  
4       transaction?

5           A.       As you see in the disclosure statement,  
6       we -- and early on, is we pursued a toggle plan.  
7       And at all times we marketed this and gave anybody  
8       who was potentially interested in this company the  
9       option to be a plan sponsor, and then eventually, if  
10      they had another structure, whether it was a 363 or  
11      otherwise, they had an option.

12                   There was never anything off the table  
13      for any potential investor into the company.

14          Q.       And the auction, that was on June 2nd,  
15      right?

16          A.       Correct.

17          Q.       Do you remember the auction?

18          A.       I do.

19          Q.       It was long, right?

20          A.       I sat in a chair in New York City for  
21      12 hours.

22          Q.       I sat in a hotel lobby in London until  
23      5:30 in the morning --

24          A.       Understood.

25          Q.       -- with my wife, on her birthday.

1                   Would it be fair to say that up until  
2     the auction that occurred on June 2nd, the company  
3     was still open to pursuing a plan sponsorship  
4     transaction?

5           A.       As I said, we were looking at every type  
6     of transaction possible --

7           Q.       Sure. So you --

8           A.       -- including at the auction.

9           Q.       Okay. So at the auction, the company  
10    was still soliciting interest -- strike that.  
11    That's a bad question.

12                   At the auction, the company was still  
13    willing to consider a plan sponsorship transaction?

14          A.       The company was always willing to  
15    basically consider anything that realized the best  
16    outcome for the company.

17          Q.       So let's go back to your declaration,  
18    which was Tab 12. And that was your declaration  
19    dated April 7th. And in paragraph 4, we were  
20    discussing, and you also seemed to --

21          A.       Do I have the right tab again? Is it  
22    12?

23          Q.       Yes.

24          A.       Paragraph 4?

25          Q.       Yeah.

1 Paragraph 4 says, and I think you seemed  
2 to recall earlier, that you contacted about 48  
3 potentially interested parties; is that correct?

4 A. That's what it says.

5 Q. Do you recall if you contacted any  
6 additional parties after April 7th?

7 A. I am sure we contacted additional  
8 parties as we received inbound phone calls.

9 Q. Do you have any sense of how many that  
10 would have been, ballpark?

11 A. Five to ten.

12 Q. Five to ten.

13 Now, did you receive -- strike that.

14 You said eventually you guys secured a  
15 stalking horse, right?

16 MR. MANN: Objection to form.

17 THE WITNESS: Yeah, we had a stalking  
18 horse bid.

19 BY MR. KISSNER:

20 Q. So it would be fair to say that --

21 A. Which was approved, just so you know, by  
22 Enigma, which is your client, Genesis and the  
23 consultation parties, just to be clear for the  
24 record that everything you're talking about,  
25 teasers, had all been approved by the consultation

1 parties.

2 Q. Okay. Thank you for clarifying that for  
3 the record.

4 Since you were successful in signing up  
5 a stalking horse, is it fair to say that you  
6 received some bids from people interested in being a  
7 stalking horse?

8 A. We received multiple term sheets before  
9 we selected the final stalking horse.

10 Q. Okay. Do you have any recollection of  
11 about how many term sheets?

12 A. I do.

13 Q. How many?

14 A. We received about four term sheets.

15 Q. About four term sheets?

16 A. Yes. Not necessarily all qualified  
17 bidders based on the bid procedures, but we received  
18 four term sheets.

19 Q. Okay. We'll look at a couple of them,  
20 and as we do so we can talk about qualifications and  
21 otherwise. Sound good?

22 A. Works for me.

23 Q. Okay.

24 MR. KISSNER: Is everybody good, by the  
25 way? I'm sort of going to get into a -- we're going



1 to walk through some documents.

2 Okay. Great. Let's go to Tab 13. And

3 I'm going to ask this be marked as Exhibit 13.

4 That's easy.

5 (Exhibit 13 marked.)

6 BY MR. KISSNER:

7 Q. Do you recognize this document?

8 A. I do.

9 Q. Can you describe it to me?

10 A. It is a proposal from Aetherial Wolf.

11 Q. Who's Aetherial Wolf?

12 A. To this day, I'm not sure.

13 Q. Did you ever talk to any representative  
14 of Aetherial Wolf?

15 A. We did. I can't recall the gentleman's  
16 name, but we spoke to the -- we pursued this like we  
17 would any other term sheet and had a conversation  
18 with the Aetherial Wolf group.

19 Q. Was it a gentleman named Don Greetham?

20 A. That's exactly who it was.

21 Q. Can you describe your conversations with  
22 Mr. Greetham?

23 A. We asked him to walk us through his term  
24 sheet, like we do every time we receive a term  
25 sheet, so that we can gain knowledge base of all of

1 the details of their term sheet.

2 Q. How would you describe the tone of those  
3 conversations?

4 A. Normal course.

5 Q. Normal course?

6 How many conversations do you think you  
7 had with Mr. Greetham?

8 A. I'd say no more than two, is my  
9 recollection.

10 Q. Okay. So you had two conversations.  
11 And I realize this was a couple months  
12 ago, so it's always perfectly fine to just say "I  
13 don't recall."

14 A. Sure.

15 Q. Do you remember the first conversation  
16 you had with Mr. Greetham?

17 A. I don't recall the details of it.

18 Q. Okay. Do you remember anything from it?

19 A. I remember leaving him with a question  
20 to provide proof of funds.

21 Q. Did you leave him with any other  
22 questions?

23 A. Not that I recall.

24 Q. Did you have any conversations with  
25 folks at Province or the debtor about your

1 conversation with Mr. Greetham?

2 A. I think it was a group call with  
3 Mr. Greetham. There was -- there was always  
4 multiple parties from Province probably on it.

5 Q. What did you think of Mr. Greetham?

6 MR. MANN: Objection to form.

7 THE WITNESS: I have no opinion of him.  
8 I don't know him. That was the first conversation  
9 I've ever had.

10 BY MR. KISSNER:

11 Q. What did you think about -- strike that.

12 When you had a conversation with

13 Mr. Greetham -- strike that.

14 How did that first conversation with  
15 Mr. Greetham come about?

16 A. We received the term sheet.

17 Q. Oh, from Aetherial Wolf?

18 A. (Nods head in the affirmative.)

19 Q. What did you think of the term sheet?

20 A. It -- the plan of reorganization did not  
21 seem realistic.

22 Q. And when we're talking about the term  
23 sheet, that's the document in front of you that's  
24 marked as Exhibit 13, right?

25 A. Uh-huh.

1 Q. Okay. Let's talk about your second  
2 conversation with Mr. Greetham. Tell me a little  
3 bit about that.

4 A. I don't even recall. I don't recall it.  
5 He never -- we never received proof of funds from  
6 Mr. Greetham.

7 Q. Do you know what you talked about with  
8 him in that second conversation?

9 A. I don't recall. Like I said, if we had  
10 one or two, I don't even recall the second  
11 conversation.

12 Q. Do you recall the tone or tenor of that?

13 MR. MANN: Object to form.

14 THE WITNESS: I don't even recall the  
15 conversation in any way.

16 BY MR. KISSNER:

17 Q. Sitting here today, do you have anything  
18 you'd like to say about Mr. Greetham?

19 MR. MANN: Objection to form.

20 THE WITNESS: I have no knowledge base  
21 on Mr. Greetham other than that conversation, my  
22 first conversation.

23 BY MR. KISSNER:

24 Q. Okay. Let's talk about this term sheet  
25 a little bit.

1                   So you received this term sheet from  
2   Aetherial Wolf or on behalf of Aetherial Wolf,  
3   right?

4           A.       Uh-huh.

5           Q.       Do you know who developed it?

6           A.       Nope.

7           Q.       Probably Aetherial Wolf?

8                   MR. MANN:  Objection to form.

9                   THE WITNESS:  I have no knowledge of  
10   who, other than that it was provided.

11   BY MR. KISSNER:

12           Q.       Now, does this set forth a particular  
13   transaction?

14                   MR. MANN:  Objection to form.

15                   THE WITNESS:  This basically sets forth  
16   two particular transactions, a plan of  
17   reorganization or, effectively, a purchase of the  
18   debtor's assets.

19   BY MR. KISSNER:

20           Q.       Would you characterize this as a  
21   proposal?

22                   MR. MANN:  Objection to form.

23                   THE WITNESS:  I would characterize this  
24   as a term sheet of a proposal.

25    ///

1 BY MR. KISSNER:

2 Q. Okay. We were talking before a little  
3 bit about the distinctions between a draft and a  
4 final proposal.

5 Where on that spectrum would you put  
6 this?

7 A. This would have been an initial proposal  
8 from a third party that effectively begins the  
9 discussion purposes around getting to a transaction.

10 Q. So a little more than a draft, but not  
11 quite a final proposal, fair?

12 A. I would say that any initial proposal is  
13 an initial proposal, it's not a draft. It doesn't  
14 mean it's a final proposal, it just means it's not a  
15 draft, it's an initial proposal.

16 Q. Now, you said that this term sheet --  
17 can I call it a "term sheet"? Are you fine with  
18 that characterization?

19 A. I think a "term sheet" is fine.

20 Q. Okay. You said that this term sheet  
21 proposes or discusses -- is "discuss" okay? Are you  
22 okay with calling it a discussion?

23 A. I'm fine.

24 Q. Okay. You said that this term sheet  
25 discusses two potential types of transactions,

1 right?

2 A. (Nods head in the affirmative.)

3 Q. Can you just say "yes" or "no." Sorry.

4 A. Yes.

5 Q. And one of them is for a plan of  
6 reorganization, correct?

7 A. It is.

8 Q. Would you characterize this as a  
9 potential plan sponsor transaction?

10 MR. MANN: Objection to form.

11 THE WITNESS: How would you like me to  
12 characterize this? Can you repeat the question or  
13 rephrase it?

14 BY MR. KISSNER:

15 Q. So -- that's fair.

16 I just want to make sure that we're  
17 using consistent terminology, that's all.

18 A. I understand.

19 Q. So this discusses or contemplates two  
20 different types of transactions. And I'm asking  
21 would it be fair to say that one of them is a  
22 potential plan sponsorship transaction?

23 A. This is -- the plan of reorganization  
24 you can characterize as a plan sponsor.

25 Q. And before, you said you didn't think

1 that it was realistic, right?

2 A. Correct.

3 Q. Can you tell me why that is or why you  
4 thought that?

5 A. That they -- the way he described the  
6 \$74 million of -- for the, quote, consideration  
7 across the capital structure and -- did not seem  
8 like it was realistic in terms of his ability to  
9 execute on something in this or have the source of  
10 funds for it.

11 Q. Was there anything other than source of  
12 funds that made you question the ability to execute?

13 A. No. I come at these things  
14 unemotionally, so I take each proposal very  
15 seriously. And this term sheet I took seriously,  
16 like every term sheet, but given the cash flows of  
17 the company, I was very interested to see his source  
18 of funds. That's where I was questioning.

19 Q. And you never received source of funds?

20 A. No. I requested it.

21 Q. Can we look at this paragraph that says  
22 "plan of reorganization" for a second?

23 A. Sure.

24 Q. Or I'll just ask you, do you know what  
25 the proposed consideration to Enigma was, under this



1 term sheet?

2 A. I'd have to relook at it, if you want me  
3 to try to --

4 Q. Sure. Why don't you take a look.

5 A. But I don't -- Item 6 says,  
6 "9.850 million, net 8,162,500, for the repayment of  
7 the senior creditor Enigma."

8 Q. That's a lot of money, right?

9 MR. MANN: Objection to form.

10 THE WITNESS: It is 9.850 million.

11 BY MR. KISSNER:

12 Q. It's a lot of money to me.

13 Now, this also discussed a potential  
14 sale transaction, correct?

15 A. Correct.

16 Q. Do you know what the headline purchase  
17 price for the sale transaction was?

18 A. 15.8.

19 Q. Did you think that the potential sale  
20 transaction was realistic?

21 A. Again, we had no idea. We explored it  
22 with him, asked him what he was buying, and in our  
23 conversation it was unclear.

24 Q. I guess what I'm getting at is that when  
25 you looked at this term sheet you said -- strike

1 that.

2 I guess what I'm getting at is that,  
3 before, you said that you had some discussions with  
4 folks at Province about this term sheet, and your  
5 impression had been that the plan of reorganization  
6 was, quote, not realistic.

7 A. That's not what I said. What I said was  
8 Province people were on the phone call with  
9 Aetherial Wolf. We had a discussion with Aetherial  
10 Wolf to whether we thought what his plan of  
11 reorganization looked like and what -- and we  
12 thought, post that conversation, it wasn't  
13 realistic.

14 Q. And you left that first conversation,  
15 and you had asked Aetherial Wolf to provide proof of  
16 funds, right?

17 MR. MANN: Objection to form.

18 THE WITNESS: Correct.

19 BY MR. KISSNER:

20 Q. Did you ask them to provide anything  
21 else?

22 A. Not to my recollection.

23 Q. And did they ever respond to you with  
24 more information after that first conversation?

25 A. I don't recall ever receiving proof of

1 funds.

2 Q. And you said you don't recall a second  
3 conversation?

4 MR. MANN: Objection to form.

5 THE WITNESS: I don't recall, actually.

6 BY MR. KISSNER:

7 Q. Do you recall Mr. Greetham accusing you  
8 of being a criminal?

9 MR. MANN: Objection to form.

10 THE WITNESS: I do not.

11 BY MR. KISSNER:

12 Q. Do you recall him accusing the debtor as  
13 being run by a criminal?

14 MR. MANN: Objection to form.

15 THE WITNESS: I don't remember our  
16 conversation at all. It was very early in our  
17 process.

18 BY MR. KISSNER:

19 Q. He was fairly angry, though, wasn't he?

20 MR. MANN: Objection to form.

21 THE WITNESS: I remember that Don was  
22 very -- spent half the call discussing his accolades  
23 as an investor.

24 BY MR. KISSNER:

25 Q. He has a pretty strong personality,

1 right?

2 MR. MANN: Objection to form.

3 THE WITNESS: I don't -- I've had one  
4 conversation with him, so I don't want to judge him  
5 off of one conversation that I remember.

6 BY MR. KISSNER:

7 Q. That's fair. Just like I hope you don't  
8 judge me for today.

9 So is it fair to say that you didn't  
10 move forward with Aetherial Wolf?

11 A. I think it's fair to say Aetherial Wolf  
12 didn't move forward with the debtor.

13 Q. Did you consider this bid to be  
14 qualified?

15 A. I needed proof of funds for it to be  
16 qualified.

17 Q. And you had mentioned before the concept  
18 of a qualified bid so that's why I asked you about  
19 it now, but I realize we haven't really talked about  
20 that.

21 So what's a qualified bid?

22 A. Well, if you want to go refer to the bid  
23 procedures. I don't have them memorized off the top  
24 of my head, and I think it's in Section 7. It lists  
25 out the -- there might be ten to 12 different

1 qualifications in general.

2 So if you'd like to read those into the  
3 record, I will state that's what a qualified bid is.

4 Q. No, that's okay. I don't think that's a  
5 good use of time.

6 A. Just there's a multiple facet, but one  
7 of them is for -- in a very early stage process is  
8 proof of funds.

9 Q. So if a guy off the street came up and  
10 handed you a dollar, that's not qualified, fair?

11 A. Correct.

12 Q. And I honestly -- you said that you  
13 didn't feel that this was qualified?

14 A. I felt like we needed to see proof of  
15 funds because it was a very aggressive bid.

16 Q. And by "aggressive," what did you mean  
17 by that?

18 A. I mean that the -- that it was new to  
19 us, it had a lot of moving parts, and in order for  
20 this to be accomplished you would need a significant  
21 amount of capital. So any -- with that amount of  
22 capital that he needed in order to accomplish this,  
23 it recalled that we needed proof of funds in order  
24 to see that -- if he actually had the whereforall  
25 [sic] to handle such an aggressive bid in terms of

1 the amount of money that would be needed to  
2 transact.

3 Q. And when Aetherial Wolf failed to  
4 provide proof of funds, did you or anybody at  
5 Province ever follow up with them, do you recall?

6 A. I don't recall, off the top of my head.  
7 I would have to check my notes.

8 Q. Fair enough.

9 Let's turn to Tab 16 which we'll mark as  
10 Exhibit 14.

11 (Exhibit 14 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this document?

14 A. Yes. This was the initial term sheet  
15 and I think -- and don't quote me whether it was the  
16 first one, but this was a term sheet from Philosophy  
17 Group -- well, it was AKA Philosophy Group,  
18 iteration 1, Philosophy Group.

19 Q. And this is one of the term sheets that  
20 you received from the parties interested in being a  
21 stalking horse?

22 A. Correct.

23 Q. And what kind of transaction did you  
24 understand this term sheet to propose?

25 A. This was going to be a plan.

1 Q. A plan sponsorship transaction?

2 A. Correct, as you can read on page 2.

3 Q. Okay. Plan sponsor.

4 And what was the total consideration  
5 that Philosophy was going to provide as plan  
6 sponsor?

7 A. I'd like -- I can't give you a direct  
8 answer on that. It is not -- the headline numbers  
9 and the real purchase price aren't the same thing,  
10 so.

11 Q. Could you explain why?

12 A. Yes. Because despite having a  
13 \$18.5 million, quote, purchase price, that also  
14 included the cash. And then they also would take  
15 out any cure costs. They would also take out  
16 professional fees. They've had about four or five  
17 different caveats within this that, mathematically,  
18 I can't explain to you in this circumstance right  
19 now.

20 So the headline number is 18.5, but  
21 that's not what actually would be the consideration  
22 that would come to the estate.

23 Q. Does this set forth a proposed recovery  
24 to Enigma?

25 A. It does.

1 Q. Can you tell me what that proposal was?

2 A. For Genesis and Enigma, you would get  
3 take-back paper of \$3 million.

4 Q. And there's an early call schedule?

5 A. They do have a call schedule.

6 Q. So not all that different from what we  
7 were talking about before, just maybe different  
8 numbers?

9 A. There was a proposal to Enigma for  
10 \$3 million with a call schedule.

11 Q. And then there was also some cash on top  
12 of this, subject to adjustment, right?

13 A. For Enigma and Genesis, is your  
14 question? Can you please elaborate on your  
15 question.

16 Q. Sure. So if we turn back to page 2 to  
17 the base purchase price -- which I understand is a  
18 headline number that might not correlate with the  
19 reality of cash in the door -- and that base  
20 purchase price is \$18.5 million, fair?

21 A. Uh-huh.

22 Q. There's a deduct from that of cure  
23 costs, right?

24 A. Uh-huh.

25 Q. And the 18.5 is going to consist of



1 \$15.5 million less cure, plus \$3 million of  
2 take-back paper, right?

3 A. Correct.

4 Q. Do you know how the \$15.5 million would  
5 have been allocated?

6 A. It does not say. No, I do not.

7 Q. Presumably, it would have just been put  
8 into the bankruptcy waterfall and it would have gone  
9 to whoever's entitled to it, fair?

10 A. Typically, if there's a winning bid and  
11 there's a cash portion, in all bankruptcies it is  
12 distributed based on the waterfall. That's how it's  
13 typically done.

14 Q. So a creditor, depending on their  
15 priority or their collateral and the amount of cash  
16 available, they would receive what they're entitled  
17 to, based off of the bankruptcy code waterfall  
18 right?

19 A. Typically.

20 Q. Now, was Philosophy selected as the  
21 stalking horse?

22 A. They were not.

23 Q. Why not?

24 A. They also didn't provide proof of funds.

25 Q. Did you consider this to be a qualified

1 bid?

2 A. It was never qualified until -- because  
3 we never got proof of funds. This Philosophy Group  
4 had -- never showed us who their investor base was  
5 in order to execute this, until after the stalking  
6 horse was picked. And even then, it was a -- it was  
7 not done in your typical fashion. They showed us a  
8 screenshot of a random bank account which we  
9 couldn't actually verify, other than their word that  
10 this was their money.

11 So in a sense is, this was a term sheet  
12 we spent a tremendous amount of time with Philosophy  
13 Group trying to get them there, you know, and yet we  
14 never really got real proof of funds, in iteration  
15 one of Philosophy Group because it changed.

16 Q. There was a further iteration of this,  
17 then?

18 A. Not of this. They created -- they lost  
19 their investment group here. He cobbled together,  
20 eventually, a new investor group later on in the  
21 process, but not at this particular time in this  
22 term sheet.

23 Q. Okay. We can talk about that later.

24 A. Sure.

25 Q. Why don't we go to Tab 19 in your

1 binder, which I'll ask the court reporter to mark as  
2 Exhibit 15.

3 (Exhibit 15 marked.)

4 BY MR. KISSNER:

5 Q. Do you recognize this document?

6 A. This is the notice of designated  
7 stalking horse bidder.

8 Q. What does that mean?

9 A. This is telling the court that  
10 RockItCoin was picked as the stalking horse bidder  
11 in the process.

12 Q. Do you know what kind of transaction  
13 this related to?

14 A. I've got to go back. Just give me one  
15 second.

16 This says a 363.

17 Q. Okay. Do you know what the purchase  
18 price was?

19 A. The initial stalking horse was  
20 16.75 million, which included 250 for the litigation  
21 trust. I remember this term sheet very well.

22 Q. And then there were additional  
23 components of the consideration, right?

24 A. There was a lot of uncertainty about the  
25 rest of the term sheet in terms of quantifying at

1 the time. The company did not know how many  
2 machines it was going to take. The company did not  
3 know how many -- who were they going to reject. The  
4 company did not know what critical vendors they  
5 wanted to keep. The company did not know what DCMs  
6 they wanted to cure, if they wanted to keep the  
7 enterprises associated with them together.

8 So, yes, there was additional thought  
9 process here in an initial term sheet. But it  
10 wasn't fully quantified, at this particular moment  
11 in time.

12 Q. Okay, I guess what I was getting at is  
13 that, after cash, there's also the payment of cure  
14 costs and the assumption of liabilities, right?

15 A. Critical vendor payments. That's what  
16 that refers to.

17 Q. Oh, okay. Got it.

18 So would it be fair to say that under  
19 the Philosophy term sheet there was a headline  
20 purchase price that was probably going to be lower,  
21 and then under the RockItCoin -- sorry -- the  
22 stalking horse term sheet, there was a purchase  
23 price that was going to be increased by other  
24 buckets of value, fair?

25 A. I would say -- I would tell you that

1 this stalking horse pick of the term sheet was a  
2 better -- was a better term sheet than the original  
3 Philosophy Group term sheet.

4 Q. Right. Because the Philosophy 1 was --  
5 for better or for worse, that was 18.5 minus  
6 something, and this was 16.75 plus something?

7 A. Again, we spoke about this earlier.  
8 I'll refresh you.

9 Picking a purchaser, whether it be a  
10 stalking horse or the winning bidder, is not just  
11 about the full price. In a sense is that we have to  
12 make sure the diligence is right, the ability to  
13 close is right, the -- that they have proof of  
14 funds. So I will not characterize it the way you  
15 would.

16 Q. Okay. I'm just -- I'm not a financial  
17 advisor so I'm just trying to make sure that I  
18 understand what these say. That's all.

19 A. Yeah.

20 Q. So how would you characterize it, then,  
21 because you don't like how I did it?

22 A. I would characterize it as this price  
23 was the best, as a fiduciary for all creditors.

24 Q. Sure. But I was just asking how would  
25 you describe this price. Because I said, perhaps

1 inarticulately, that this is \$16.75 million plus  
2 something else, and you said you didn't agree with  
3 that description.

4 A. I would say that, right now, it's  
5 \$16.75 million plus uncertain cure costs and  
6 critical vendors.

7 Q. And then for the Philosophy term sheet,  
8 it was 18.5 minus some cure costs and other  
9 liabilities?

10 A. It was minus certain liabilities, but it  
11 was also plus a certain amount of debt. So it was  
12 minus and plus in the Philosophy.

13 Q. And weighing the two, the determination  
14 was made, not just off of purchase price, but on a  
15 holistic group of qualitative factors, that this was  
16 a superior offer?

17 A. Correct.

18 MR. MANN: Objection to form.

19 BY MR. KISSNER:

20 Q. And does this reflect how many machines  
21 the stalking horse intended to purchase?

22 A. It did not.

23 Q. And when I say "the stalking horse," do  
24 you understand -- well, strike that.

25 Who was the proposed buyer under this

1 term sheet?

2 A. RockItCoin.

3 Q. And so when I say "RockItCoin" or  
4 "stalking horse," you'll know that I'm referring to  
5 RockItCoin, LLC?

6 A. I do.

7 Q. Okay. Does this term sheet reflect how  
8 many machines RockItCoin wanted to buy?

9 A. I don't think in this term sheet they  
10 specified the number, at this point in time.

11 Q. Right. If you go to page 2, footnote 2  
12 at the bottom, you can read that to yourself, but  
13 that might refresh your recollection.

14 A. Yes. Recalling that we had 3500 for  
15 sale, obviously, in the field, and they were  
16 contemplating here keeping between 1800 and 2500 at  
17 this point in time.

18 Q. And this one wasn't interested in  
19 warehoused units, fair?

20 A. My recollection is that they were --  
21 they were not going to purchase, in the initial term  
22 sheet, the warehouse units.

23 Q. And we've been talking about this as a  
24 term sheet, so I'm just going -- I'll ask you the  
25 same question that I asked you about some of the

1 others.

2 Would you consider this a draft?

3 A. This is an initial term sheet proposed  
4 by RockItCoin that was then verified in order to  
5 become a stalking-horse bid.

6 Q. Would you consider it a formal proposal?

7 A. It was a formal proposal. It's a formal  
8 term sheet and proposal.

9 Q. So this notice -- did this attach a  
10 purchase agreement?

11 A. I don't recall whether this attached a  
12 PA or not.

13 Q. Do you recall when this term sheet was  
14 filed with the court?

15 A. I don't know the exact date. All I know  
16 is that it was after 4/21, so my assumption, it was  
17 filed around the 25th or something.

18 Q. Do you recall if at the time -- strike  
19 that.

20 Do you recall if, by April 25th, the  
21 debtor and RockItCoin had entered into an executed  
22 asset purchase agreement?

23 A. I don't recall.

24 Q. Do you recall when an asset purchase  
25 agreement was executed?



1 A. I don't recall.

2 Q. Now, in your experience, do debtors  
3 generally select a stalking horse without an  
4 executed asset purchase agreement?

5 A. It depends. Sometimes yes, sometimes  
6 no.

7 Q. What does it depend on?

8 A. The debtor's counsel, where we are in  
9 the process. So all I'm saying, there's no firm  
10 rule.

11 Q. Every situation's different, right?

12 A. Every situation is different.

13 Q. In your experience, does having an  
14 executed asset purchase agreement, does that send a  
15 signal to the market?

16 A. Yes.

17 Q. What kind of signal?

18 A. It signals that this is a very strong  
19 bid and real. So my assumption is that we had an  
20 asset purchase, but I don't recall if it was filed  
21 simultaneously with the term sheet.

22 Q. But maybe I'm a little confused.

23 I thought, before, you said that you  
24 didn't recall if there was an asset purchase  
25 agreement executed by this time, right?

1           A.           There should have been a -- typically,  
2           there will be. We always try to execute an asset  
3           purchase agreement. My assumption is that there --  
4           I think there was one, but I don't recall the exact  
5           date, if it was filed in the same filing as this  
6           one.

7           Q.           Now, you said that having an executed  
8           asset purchase agreement sends a positive signal to  
9           the market?

10          A.           It does.

11          Q.           Filing for a stalking horse without an  
12          executed asset purchase agreement, does that send a  
13          signal to the market?

14                      MR. MANN: Objection to form.

15                      THE WITNESS: I think that it's very  
16          rarely done. It's done less often because it's a  
17          pretty negative thing if you're only filing a  
18          stalking horse term sheet. And a lot of times,  
19          under your bid that we need to go through the 12,  
20          you can't have a stalking horse without a filed  
21          asset purchase agreement.

22                      So I'm happy to go back through the 12  
23          conditions that you talked about in the bid  
24          procedures, if you'd like to.

25          ///

1 BY MR. KISSNER:

2 Q. No. That's okay.

3 What are some of the reasons why not  
4 having an executed asset purchase agreement would  
5 send a bad signal to the market?

6 MR. MANN: Objection to form.

7 THE WITNESS: I think it's very simple,  
8 is that not having an executed APA makes it less  
9 likely that the buyer is actually going to close.

10 BY MR. KISSNER:

11 Q. Now, I'm not going to ask you to give a  
12 legal opinion, but is it your understanding that a  
13 party is bound to a proposed transaction before it  
14 executes an APA?

15 A. I'm not a lawyer.

16 Q. Do you have an understanding?

17 A. I'm not going to opine on a legal issue.

18 Q. That's fair enough.

19 Do you have an understanding as to  
20 whether RockItCoin was bound to the terms of the  
21 stalking horse transaction at the time this was  
22 filed?

23 MR. MANN: Objection to form.

24 THE WITNESS: Again, that's a legal  
25 opinion and I'm not going to opine on whether a

1 client -- whether a third party or our side views  
2 them as bound. You can speak to counsel.

3 MR. KISSNER: All right. Let's go to  
4 Tab 44. And we'll mark this as Exhibit 16.

5 (Exhibit 16 marked.)

6 BY MR. KISSNER:

7 Q. Do you recognize this document?

8 A. This is an e-mail, right?

9 Q. It is an e-mail.

10 A. Okay.

11 Q. Do you recognize it, though?

12 A. This exhibit is mixing and matching. So  
13 are you asking me to recognize the e-mail or  
14 recognize the document behind it?

15 Q. Either. Well, let's start with the  
16 e-mail. Do you recognize the e-mail?

17 A. I don't recall the e-mail, but I  
18 understand the context of the e-mail.

19 Q. Okay. What's that context, as you  
20 understand it?

21 A. This context is that Brett was informing  
22 the consultation parties, including yourself, that  
23 RockItCoin basically didn't have -- didn't have  
24 financing.

25 Q. And Brett is Brett Axelrod?

1 A. Yeah.

2 Q. And she's counsel to the debtor?

3 A. She is.

4 Q. And then how about the attachment, do  
5 you recognize this document?

6 A. Are you referring to the stalking horse  
7 bid term sheet asset purchase?

8 Q. I am.

9 A. I recognize the term sheet.

10 Q. Can you tell me what it is?

11 A. Sure. This is the amendment and the new  
12 stalking horse bid.

13 Q. Okay. Does it set forth a proposed  
14 purchase price for the debtor's assets?

15 A. It does.

16 Q. Can you tell me what that purchase price  
17 is?

18 A. Three and a half million, plus 250;  
19 "plus plus," to use your terminology.

20 Q. Now is that less than the original  
21 stalking horse term sheet that we were just looking  
22 at and that's marked as Exhibit 15?

23 MR. MANN: Objection to form.

24 THE WITNESS: It is less, but not -- but  
25 the math is not simple. The initial term sheet that

1 you looked at -- again, you're comparing apples to  
2 oranges. You need to compare like-minded term  
3 sheets in order for you actually -- for the court to  
4 understand what is happening here. The original  
5 term sheet, at 16 and a half, included the cash in  
6 the estate. The new term sheet here, although lower  
7 on a net basis, does not include the cash. So if  
8 you do -- so the math you have to think about is not  
9 apples to apples.

10 BY MR. KISSNER:

11 Q. Do you recall --

12 A. But yes, it is a lower price than the  
13 prior term sheet.

14 Q. Okay. I was going to say, do you recall  
15 the cash that was being purchased under the initial  
16 term sheet?

17 A. 9 million.

18 Q. And they're not purchasing the cash  
19 here?

20 A. They are not.

21 Q. And the initial term sheet, to use my  
22 inartful phrasing, was 16.75 plus plus, right?

23 A. I would agree that that's what it looks  
24 like.

25 Q. And so net of \$9 million cash, that

1 would have been \$7.75 million of consideration?

2 A. That would be.

3 Q. Okay. And then this revised term sheet  
4 does not include any cash component, right? This  
5 revised term sheet does not contemplate purchasing  
6 cash from the debtor, correct?

7 A. Correct.

8 Q. If one were to do an apples-to-apples  
9 comparison, one would say that this is a purchase  
10 price of \$3.5 million versus \$7.75 million, fair?

11 A. RockItCoin basically didn't have any  
12 money.

13 Q. It didn't have any money?

14 A. Didn't have enough money to complete the  
15 prior purchase. They lost their financing from a  
16 bank and could not go forward with the different --  
17 the prior transaction. They came back here,  
18 proposed a new transaction, and that's what this  
19 looks like. They showed us a new proof of funds  
20 that would have covered a three and a half plus the  
21 250, plus plus. But RockItCoin effectively walked  
22 away from the initial term sheet.

23 Q. In your experience, have you ever seen  
24 that happen before?

25 A. Sure. There are many times in any

1 financial transaction where you thought you would  
2 have financing and then financing did not take  
3 place.

4 Q. Including with a stalking horse?

5 A. It could happen in any transaction,  
6 stalking horse just being one of them.

7 Q. Had you ever seen that happen on a  
8 transaction with a stalking horse?

9 A. I have not been involved directly with a  
10 transaction where someone walked away from a stalking  
11 horse with financing.

12 Q. Do you recall if one of the  
13 qualifications to become stalking horse was proof of  
14 financing?

15 A. They had proof of financing, correct,  
16 that was a qualification, but that's -- again, I'm  
17 happy to go back and read the bid procedures.

18 Q. I guess I'm just confused because they  
19 had proof of financing, but then the financing  
20 disappeared?

21 A. (Nods head in the affirmative.)

22 MR. MANN: Objection to form.

23 THE WITNESS: It did.

24 BY MR. KISSNER:

25 Q. Do you think this sent a signal to the



1 market?

2 A. I'm not going to judge what markets --  
3 I'm not in the business of judging what the market  
4 thinks.

5 Q. But do you think it sent a signal?

6 MR. MANN: Objection to form.

7 THE WITNESS: Again, I'm not in the  
8 business of interpreting what the market thinks.

9 BY MR. KISSNER:

10 Q. Right. But I guess, before, you had  
11 told me that, for example, having an executed APA,  
12 that sends a positive signal; having a stalking  
13 horse, that sends a positive signal. So I'm just  
14 asking did this, do you think, send a signal?

15 MR. MANN: Objection to form.

16 THE WITNESS: I don't think it  
17 necessarily has anything to do with the company.  
18 The only signal it sends is that RockItCoin didn't  
19 have the funds that they originally thought they  
20 had.

21 MR. KISSNER: Hopefully, I have like an  
22 hour, hour and a half left, I would say. Do you  
23 guys need to take another break?

24 THE WITNESS: Yeah. Let me use the  
25 bathroom.

1 MR. KISSNER: Let's go off for a couple  
2 minutes.

3 (A recess is taken.)

4 MR. KISSNER: We're back on.

5 BY MR. KISSNER:

6 Q. We just came back from a break. Did you  
7 have any discussions about the content of your  
8 testimony during the break?

9 A. I did not.

10 Q. Okay, great.

11 So we were talking a little bit about  
12 this revised bid from RockItCoin. How many other  
13 bids did the debtor end up receiving, if you recall?

14 A. The one thing I note about this in your  
15 analysis, which was incorrect, again, is that the  
16 number of machines was only 600 to 1,000 versus the  
17 old term sheet was a much greater amount. So again,  
18 the math is different. So again I just want to be  
19 clear that you're comparing apples to oranges.

20 Secondly, I think at the time we  
21 received, if you include Aetherial Wolf -- not all  
22 qualified -- RockItCoin, Forest Road in conjunction  
23 with National Bitcoin, Philosophy 1. And I'll use  
24 that term, if that's okay with you -- at this point  
25 in time, and then the revised RockItCoin. So I'd

1 say at that particular moment in time, my  
2 recollection is roughly four.

3 Q. And by "that moment in time," you mean  
4 late April, the time of the bid deadline?

5 A. I am saying as of when this was filed on  
6 5/12.

7 Q. Oh, okay. Got it.

8 A. I'm just using that as my recollection  
9 at this point.

10 Q. Fair enough.

11 And you mentioned Forest Road. You said  
12 they were in conjunction with National Bitcoin.  
13 They were also in conjunction with the DIP lender,  
14 right?

15 A. In the beginning.

16 Q. Okay. At some point they no longer  
17 were?

18 A. Yes.

19 Q. Do you have any understanding as to why  
20 that changed?

21 A. Other than that they weren't interested.

22 Q. Okay. So you were saying that those --  
23 and by "those," I mean Philosophy 1, RockItCoin,  
24 Forest Road and Aetherial Wolf --

25 A. I like that you're using "Philosophy 1,"

1 by the way.

2 Q. Yeah, I gotcha.

3 Aetherial Wolf, I think, was the fourth  
4 and they weren't qualified. So that's four bids,  
5 right?

6 A. At that particular moment in time.

7 MR. MANN: Objection to form.

8 BY MR. KISSNER:

9 Q. That's fine.

10 But later on there were more bids,  
11 different bids?

12 A. Well, of course.

13 Q. What other bids do you recall the debtor  
14 receiving, whether qualified or otherwise?

15 A. Qualified or unqualified, before the  
16 next time, which was May 30th, which was the time  
17 the next term sheets had to be due, prior to the  
18 auction, we received the Philosophy 2 and we  
19 received the Heller/Genesis.

20 Q. Any others?

21 A. Not that I recall.

22 Q. Okay.

23 MR. KISSNER: Let's go to Tab 24, which  
24 I'll ask the court reporter to mark as Exhibit 17.

25 (Exhibit 17 marked.)

1 BY MR. KISSNER:

2 Q. And you had just said you received  
3 Philosophy 2 and Heller, right?

4 A. That is my recollection.

5 Q. Okay. We'll take those out of order and  
6 we'll start with what I think you referred to as  
7 "Heller."

8 So looking at Tab 24, which is  
9 Exhibit 17, do you recognize this document?

10 A. I do.

11 Q. Can you tell me what it is?

12 A. This was the initial term sheet for the  
13 ATM assets from Heller -- and I'm not going to say  
14 it was the initial because all his forms look alike.

15 Q. That's fair.

16 There were a number of revisions to this  
17 over --

18 A. Yes. I don't know which one you're  
19 showing me, but there is -- this is the format that  
20 Heller Capital typically used to provide a term  
21 sheet.

22 Q. If I told you this was one was dated  
23 June 1st, would that ring a bell to you?

24 A. It would.

25 Q. So is it your understanding that this is

1 a revised version of whatever term sheet they sent  
2 before May 30th?

3 A. Correct.

4 Q. Okay. Does this -- strike that.

5 What is your understanding of the type  
6 of transaction that this term sheet proposes?

7 A. This was a -- basically under a 363  
8 as-is when-is sale.

9 Q. Would you consider this a final  
10 proposal -- or strike that.

11 Would you consider this a formal  
12 proposal, I believe is the terminology that we were  
13 using before?

14 A. I would say this is a initial proposal,  
15 correct.

16 Q. An initial proposal. Okay.

17 A. Or a formal. It's all -- for the --  
18 ahead of the auction, yes.

19 Q. Okay. Did you consider Heller's bid to  
20 be a qualified bid?

21 A. We did.

22 Q. And does this set forth a recovery for  
23 Enigma?

24 A. It does not, is my recollection. Heller  
25 was buying the assets in this term sheet. In

1 conjunction, were also buying the software assets at  
2 the same time. But basically this is an as-is  
3 when-is 363 sale and they were just buying the  
4 assets.

5 Q. And by "the assets," you're referring to  
6 what?

7 A. In this term sheet, because Heller was  
8 negotiating -- or George was negotiating on behalf  
9 of Heller and Genesis Coin, so everything done was  
10 in conjunction, so looking at these out of sequence  
11 is not correct.

12 This particular part of it was a  
13 purchase for the DCMs that were of -- as he lists  
14 here, 2200 in storage and 3500 DCMs that were in the  
15 field.

16 Q. So it's a total of 5700 DCMs?

17 A. That is what this says.

18 Q. And what was the purchase price for the  
19 5700 DCMs?

20 A. 3.7, and split 770,000 for warehouse,  
21 2.930 for ones that were in the field.

22 Q. But that's 3.7 headline?

23 A. 3.7 headline.

24 Q. And did this have -- strike that.

25 Do you recall that some of the term

1 sheets that we were talking about before, you were  
2 saying that the headline purchase price wasn't  
3 necessarily the cash that was going to come in; is  
4 that fair?

5 A. That is fair.

6 Q. Does the same caveat apply to this?

7 A. No. This is a straight asset purchase  
8 for 3.7 million for the DCMs, plus 1.5 for the -- or  
9 actually, at the time, roughly \$2 million for the  
10 Genesis software.

11 Q. And that was in a separate term sheet  
12 but submitted in conjunction with this one?

13 A. And negotiated with the same party  
14 negotiating for both. So from the debtor's  
15 perspective, is they were together.

16 Q. Okay. And that was a headline total  
17 purchase price of \$5.7 million?

18 A. That's correct.

19 Q. Okay. Did you consider this to be a  
20 superior offer to the stalking horse?

21 A. We did.

22 Q. Okay. And what were some of the reasons  
23 for that?

24 A. I think, very simply, one, this was an  
25 as-is when-is sale, not subject to due diligence.



1 We were very concerned, given the operational state  
2 of the business, that RockItCoin couldn't close.  
3 They had a massive due diligence out. They --  
4 basically the operations were deteriorating  
5 immensely at the time of this auction. And what I  
6 mean by that is, one is -- we talked about this  
7 earlier -- we lost two licenses. We got an e-mail  
8 on the day of the auction from Jim Hall that said,  
9 "We have only \$500,000 in cash. We are at  
10 dangerously low levels. We've had software  
11 problems. We had machines not working. We had a  
12 threat from OptConnect, who threatened us to turn  
13 off our -- if we didn't pay them a certain amount of  
14 money, to turn off our whole business."

15 So at the time, walking into this  
16 auction, we were very concerned that when RockItCoin  
17 decided to look under -- continue to do their  
18 diligence here, with their large diligence out,  
19 which included key employees, that they weren't  
20 going to be able to close. And our terms and  
21 conditions on the bid procedures was an as-is  
22 when-is sale and this is an as-is when-is sale. So  
23 there was multiple factors besides just a headline  
24 price that we're taking into account.

25 Q. And RockItCoin had already burned you

1 before, right?

2 A. That hadn't -- we don't get emotional  
3 about counterparties. We are looking at this  
4 straight, on the way we look at any analysis. So  
5 that had nothing to do with anything.

6 Q. Right. I'm not accusing you of letting  
7 emotions cloud your judgment, I'm just observing  
8 that --

9 Well, I'm wondering if an objective  
10 consideration was that RockItCoin had already backed  
11 out of a prior term sheet?

12 A. That was not a consideration, only  
13 because their revised term sheet qualified. So  
14 thus, I was not concerned about that because they  
15 did qualify. Any buyer can always walk away. It's  
16 a normal course of running any M&A process, whether  
17 you're a buyer or you're a seller. Thus, RockItCoin  
18 was treated like anybody else who had proof of  
19 funds.

20 We also didn't have a -- we would want  
21 to encourage RockItCoin to be at the table, and we  
22 did heartedly, because we were trying -- we were  
23 going to auction. We want as many parties as  
24 possible so that we have as much competition as  
25 possible in order to get the highest price for the

1 estate.

2 Q. Because that bids up the price, right?

3 A. More people bidding for an asset, the  
4 likelihood of having a higher price increases.

5 Q. Makes sense.

6 A. Simple supply-and-demand economics.

7 Q. Took the words right out of my mouth.

8 Let's turn to Tab 25 and we'll mark that  
9 as 18.

10 (Exhibit 18 marked.)

11 BY MR. KISSNER:

12 Q. Do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. This is Philosophy 2.

16 Q. Can you describe it?

17 A. Can you expand on how you would like me  
18 to describe it?

19 Q. Just, in your own words, just tell me  
20 what this document is, beyond Philosophy 2?

21 A. This was Philosophy 2 to be, basically,  
22 a new term sheet in an attempt to be a plan sponsor.

23 Q. You see where it says on page 2 -- if  
24 you go down, do you see where it says "Plan Sponsor"  
25 in bold on the left, and you see the column to the

1 right beginning "newly formed acquisition vehicle"?

2 A. Where do I see that?

3 Q. Right next to "plan sponsor," it says "a  
4 newly formed" --

5 A. Yes, by "DigitalImpact," which was  
6 Philosophy 2.

7 Q. I was going to say, do you understand  
8 DigitalImpact Holdings, that's Philosophy?

9 A. Yeah, DigitalImpact Holdings is  
10 Philosophy 2.

11 Q. And this was a plan sponsorship term  
12 sheet, right?

13 A. It was.

14 Q. When did you receive this?

15 A. My recollection -- I don't recall the  
16 date. I do recall that it was potentially after the  
17 deadline for term sheets to be submitted.

18 Q. Could you look at the stamp at the top?  
19 Does that refresh your recollection?

20 A. Okay. This is 6/1. Again, there was  
21 multiple versions. Okay. I'm with you.

22 Q. I understand. I was copied on some of  
23 the e-mails.

24 A. Yeah, the original, this was the 6/1  
25 version. I'm with you.

1 Q. Okay. And this was a plan sponsorship  
2 transaction, right?

3 A. Uh-huh.

4 Q. And the auction was on June 2nd?

5 A. Correct.

6 Q. So at least as of June 1st, the company  
7 was still soliciting interest in a plan sponsorship  
8 transaction?

9 A. We have -- as I've repeatedly said, we  
10 are -- we were open to any type of arrangement.

11 Q. Okay. Does this set forth a recovery  
12 for Enigma?

13 A. No.

14 Q. Could you turn to page 6 of the  
15 document?

16 A. It does have -- on the front page it has  
17 the \$6 million of take-back paper. I don't know if  
18 there's actually specific recovery for Enigma.

19 Q. On page 6?

20 A. Yes, for Genesis and Enigma, \$6 million  
21 of take-back paper.

22 Q. And take-back paper is new debt, right?

23 A. In the reorganized company.

24 Q. And then turning back to page 2, do you  
25 see where it says "base purchase price"?

1 A. Uh-huh.

2 Q. So this says the purchase price  
3 consisted of some amount of cash plus take-back  
4 paper, fair?

5 A. It does.

6 Q. And I think before we were talking about  
7 how a cash component, that would be -- for lack of a  
8 better word -- run through the waterfall, and  
9 whoever's entitled to it gets it?

10 A. Yes.

11 Q. Would you agree that is also the case  
12 with this proposal?

13 A. Sure.

14 Q. Did you view this as a qualified bid?

15 A. And remember, when I'm talking about  
16 that, I'm talking about gross, not net proceeds.  
17 Different.

18 Q. Sure. How do those differ?

19 A. Well, "net" has deductions for  
20 surcharges, other things that could potentially come  
21 out of it that are away from -- you know, gross and  
22 net are two different things. That's not the way  
23 that we run an auction. We run it on a gross basis.

24 Q. Of course.

25 A. So the waterfall could differ than

1 directly down the waterfall, just to be clear.

2 Q. Sure.

3 I think -- would it be fair to say that  
4 some of the deductions from the waterfall are what  
5 you're talking about there?

6 A. Yes. There might be other deductions,  
7 yes.

8 Q. So they sort of sit at the top?

9 A. Correct.

10 Q. Did you view this as a qualified bid?

11 A. We needed special approval to get --  
12 from all creditors, as you remember, including any  
13 consultation parties, to make this -- to have this  
14 put in place. The original bid, remember, was  
15 allowed sort of into the fold to create as many  
16 buyers as we could. But remember, the consultation  
17 parties made an exception to that rule, only on the  
18 basis that -- because we were still waiting on proof  
19 of funds.

20 Number two is yes -- so eventually, yes,  
21 they were in the room, they provided proof of funds,  
22 but not on the day one of the bid procedures.

23 Q. Do you see where on this page it says  
24 "purchase price deposit"? Can you read that to  
25 yourself.

1 A. Uh-huh.

2 Q. Let me know when you're done.

3 A. Yep, I read it.

4 Q. So this contemplated that, at the end of  
5 the auction, Philosophy would deposit \$980,000 into  
6 a bank account?

7 A. Which, again, was against the bid  
8 procedures.

9 Q. Okay. But that's what this  
10 contemplates, at least?

11 A. It does.

12 Q. At the time of the auction, had you  
13 received proof of funds with respect to the  
14 \$980,000?

15 A. I don't recall at the exact moment in  
16 time.

17 Q. Okay.

18 A. And, again, the proof of funds was a  
19 bank account.

20 Q. Yep. A screenshot of a bank account.  
21 Anybody could make that.

22 A. Which, as we know, is trying to create  
23 demand but is sort of -- you have to think about  
24 that in, again, the mosaic of how to determine  
25 winning bidders.



1 Q. But you gave them a seat at the table at  
2 the auction; they were allowed to participate?

3 A. We did.

4 Q. Did you ever have any intention of  
5 pursuing a transaction with Philosophy?

6 A. Of course. We had intentions of  
7 pursuing with each party equally.

8 Q. So at the time of the auction, you had  
9 an intention of pursuing a plan sponsorship  
10 transaction with Philosophy provided that they were  
11 the winning bidder?

12 A. We had the same intention with every  
13 party.

14 Q. Okay. And that intention was, if you  
15 won the auction, you'd move forward with the  
16 transaction that was selected?

17 A. Correct.

18 Q. So we were talking before about how  
19 RockItCoin was the stalking horse, right?

20 A. They were.

21 Q. Do you think the process benefited from  
22 having a stalking horse?

23 A. We did. That's why we had a stalking  
24 horse in place.

25 Q. How do you think the sale process

1 benefited from having a stalking horse in place?

2 A. Because no matter what happens, we have  
3 a bidder.

4 Q. Do you think the estate benefited from  
5 having RockItCoin serve as stalking horse?

6 A. We did.

7 Q. And why is that?

8 A. Same reason.

9 Q. Do you think that Enigma benefited from  
10 RockItCoin serving as the stalking horse?

11 A. I didn't look at Enigma as an individual  
12 creditor. I'd look at it as fiduciary  
13 responsibility to the estate and each creditor  
14 within the estate, not as Enigma in general. I  
15 think in general having a stalking horse that  
16 creates the highest price benefits the estate and  
17 all creditors.

18 Q. Sitting here today, do you think that  
19 Enigma benefited from RockItCoin serving as stalking  
20 horse?

21 MR. MANN: Objection to form.

22 THE WITNESS: Again, my answer would be  
23 the same.

24 BY MR. KISSNER:

25 Q. Do you know what a "breakup fee" is?

1 A. I do know what a breakup fee is.

2 Q. Can you explain it to me?

3 A. Breakup fee is the amount of money a  
4 stalking horse receives if someone else, basically,  
5 overbids their initial stalking horse bid and they  
6 ended up not being the winner of the auction.

7 Q. Was RockItCoin entitled to a breakup fee  
8 under its APA?

9 A. They were.

10 Q. Do you recall how much it was?

11 A. It was three percent of the purchase  
12 price plus 150,000 of expenses. If I remember  
13 correctly, it's 186,000 plus 150. Add those two  
14 numbers together and you get to their stalking horse  
15 fee -- or breakup fee.

16 Q. So 336, does that sound right?

17 A. Sounds right.

18 Q. Do you know if the debtor, in fact, paid  
19 RockItCoin a breakup fee?

20 A. We did.

21 Q. Do you know how much it paid on account  
22 of the breakup fee?

23 A. I did not execute that transaction.

24 Q. Was there a reduction in the breakup fee  
25 paid? I just don't recall.

1 A. I don't recall either. I don't think  
2 so, but I don't recall.

3 Q. Do you recall that there was a dispute  
4 over the breakup fee?

5 A. Briefly, but I don't recall the details.  
6 It was handled by counsel.

7 Q. Do you recall anything about it?

8 A. There was a small dispute.

9 Q. Do you know what it was about at all?

10 MR. MANN: Objection to form.

11 THE WITNESS: I don't recall the details  
12 of it, so I'm not the best person to ask on that  
13 particular topic.

14 BY MR. KISSNER:

15 Q. All right. Are you aware of any  
16 litigation being filed with respect to that dispute?

17 A. There was definitely -- there was talk  
18 of litigation. I just don't know -- I don't recall  
19 the end of the process, of the steps in the process  
20 to get there. It was resolved.

21 Q. It was resolved at the end of the day?

22 A. That was my understanding.

23 Q. And as -- presumably as part of that  
24 resolution, a breakup fee got paid?

25 A. Correct.

1 Q. Do you think Enigma benefited from the  
2 payment of a breakup fee to RockItCoin?

3 A. I think the debtor engaged in  
4 contractual terms.

5 Q. But do you think Enigma received a  
6 benefit?

7 MR. MANN: Objection to form.

8 THE WITNESS: I don't know why that's  
9 relevant. I don't even know even how to  
10 characterize something that has nothing to do with  
11 Enigma.

12 BY MR. KISSNER:

13 Q. So you think the breakup fee had nothing  
14 to do with Enigma?

15 A. I think that, at the end of the day, is  
16 a stalking horse was -- set the floor of the  
17 auction. In every -- almost ev- -- every stalking  
18 horse bid generally has a breakup fee attached to  
19 it. If the stalking horse is a benefit to the  
20 estate and all creditors and a breakup fee is part  
21 of that, then it benefits all creditors. If you'd  
22 like to single out Enigma yourself, you can, but  
23 that's the way I look at it.

24 Q. Okay. But you think the estate as a  
25 whole benefited from the payment of the breakup fee?

1           A.           I think the estate as a whole benefits  
2           as a stalking horse bid.

3           Q.           And part of the price of having the  
4           stalking horse is you've got to pay the breakup fee?

5           A.           That is correct.

6           Q.           Okay. All right. Let's talk a little  
7           bit about the auction, if that's okay.

8           A.           Sure.

9           Q.           It wasn't my favorite night either, so  
10          that's fine.

11                   MR. KISSNER: Let's turn to Tab 41.  
12          We'll mark this as Exhibit 19.

13                   (Exhibit 19 marked.)

14          BY MR. KISSNER:

15          Q.           Do you recognize this document?

16          A.           I do.

17          Q.           What is it?

18          A.           My recollection, this is -- this is  
19          Tanner giving you a heads up on who we're picking as  
20          the first bid --

21          Q.           Okay. And this --

22          A.           -- at the auction.

23          Q.           Sorry.

24          A.           At the auction.

25          Q.           And this lists, I think, four bids

1       there?

2           A.       There were.

3           Q.       And one of the bids was Heller Capital  
4       and Genesis Coin, and that was who we were  
5       discussing earlier, right?

6           A.       They were.

7           Q.       And then another one is RockItCoin, and  
8       that was the stalking horse. And then another one  
9       was DigitalImpact Holdings and that's Philosophy 2?

10          A.       Correct.

11          Q.       Okay. I also see Chris McAlary's name  
12       here.

13          A.       That's correct. But he was bidding on  
14       more Brazil and litigation assets than he was on the  
15       company itself, although there was a informal,  
16       apparently, agreement or conversations happening  
17       between Chris McAlary and DigitalImaging.

18          Q.       Interesting.

19               Do you know anything about the substance  
20       of those communications?

21          A.       I do not.

22          Q.       When did you learn about those  
23       communications?

24          A.       Sometime during the process, prior to  
25       the auction. But there was no formal agreement so

1 we treated them as separate.

2 Q. Do you know anybody at Province who  
3 would know more about those communications?

4 A. I do not. We weren't involved. Chris  
5 was there doing diligence for them, so that Chris,  
6 as CEO of the company, was providing conversations  
7 about the company.

8 Q. Was Province okay with that or --

9 A. Yeah. I mean it's -- again, the more  
10 information that helps the buyer get to a higher  
11 price, whether it was from the CEO, CFO, Province,  
12 we encouraged. Diligence was a big deal here, given  
13 the operational disarray the company was in.

14 Q. You said Chris was bidding on Brazil and  
15 litigation assets, right?

16 A. That's correct.

17 Q. And the litigation assets, I think, is  
18 subject to a current ongoing dispute, right? Are  
19 you aware of that?

20 A. Dispute?

21 Q. Yeah. I think there's a dispute in the  
22 bankruptcy court about it. You're not here to  
23 testify about it. I just want to make sure I'm  
24 correct.

25 MR. MANN: Objection to form.



1 THE WITNESS: Just continue on.

2 BY MR. KISSNER:

3 Q. I mean he wanted to buy some litigation  
4 claims; is that the idea?

5 A. He wanted to buy Brazil and some  
6 litigation claims.

7 Q. Do you know what litigation claims those  
8 were?

9 MR. MANN: Objection to form.

10 THE WITNESS: It was the Bitcoin Depot  
11 at the time. Cole Kepro was not offered at the  
12 auction.

13 BY MR. KISSNER:

14 Q. And Bitcoin Depot, that was bid access,  
15 that whole dispute?

16 A. There's two litigations within it, yeah.

17 Q. But it related to them turning off the  
18 machines?

19 A. On the bid-access side, yeah.

20 Q. And then -- so that's fine. Litigation  
21 claims.

22 You also said "Brazil." Can you  
23 elaborate on what that meant or means?

24 A. They have a subsidiary called Brazil.  
25 Brazil was -- was, at the time, still the subject of

1 major diligence by us, in terms of understanding it.  
2 It's a very -- it's a very difficult asset to  
3 diligence for anybody, because of its location,  
4 because of the conditions that were put around it  
5 where there's power of attorney away from the  
6 company, so -- and but there was cash down there,  
7 and there was assets down there.

8 So as a representative of the estate,  
9 you know, we would love to have -- we would love to  
10 sell that asset, but we were doing our work to try  
11 to make sure that we were maximizing value.

12 Q. And the debtor owned the equity in the  
13 Brazilian subsidiary?

14 A. That's correct.

15 Q. If we just say "Brazil," we'll know  
16 we're talking about the Coin Cloud Brazil  
17 subsidiary?

18 A. I am fine with that.

19 Q. You said there were some cash down there  
20 and some other assets, right?

21 A. Yeah, cash and some DCMs.

22 Q. So "some DMCs," that was what you meant  
23 by "other assets"?

24 A. Correct.

25 MR. MANN: Objection to form.

1 BY MR. KISSNER:

2 Q. Do you have any sense of how many DCMs  
3 are owned by Brazil?

4 A. I would say that originally it was  
5 someplace around 20.

6 Q. Okay. And now?

7 A. I think -- I think they might have --  
8 have additional that were shipped down there, but I  
9 don't know the exact number.

10 Q. Shipped down there by the debtor?

11 A. Uh-huh.

12 Q. So previously, they were in control of  
13 the debtor; now, they're in Brazil?

14 A. I think these were always predetermined  
15 to go down there and I think they -- if I remember  
16 correctly, they were paid for by Brazil. But I  
17 don't have that information -- I wasn't prepared for  
18 that information today.

19 Q. That's fair.

20 Do you know who at Province might know  
21 about that or who at the company might know about  
22 that?

23 A. I can offer I can get back to you.

24 Q. Okay. That would be fantastic.

25 A. I don't have the person who knows about

1 the intricacies of Brazil.

2 Q. Good country.

3 A. In terms of --

4 Q. Is it fair to say then that the DCMs  
5 owned by Brazil, not part of this asset sale?

6 A. Correct.

7 Q. Did any of the other bidders express an  
8 interest in buying Brazil, or just Chris?

9 A. I think over time there's been many  
10 iterations of these term sheets, I think, so in the  
11 current term sheets, you see there the answer is no.

12 Q. Okay. I'll take your word for it.

13 Were there any other bidders that  
14 participated in the auction, other than the four  
15 that are listed in Exhibit 19?

16 A. Enigma.

17 Q. Okay. Anybody else?

18 A. No.

19 Q. Okay. Let's turn to Tab 42, which we'll  
20 mark as 20.

21 (Exhibit 20 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. Yes. This is the document that I didn't  
25 see until post auction because I was in New York, as

1 you were in London. But yes, this was the terms of  
2 the Enigma credit bid, which was 2.6 million for --  
3 of securities for 2200 machines.

4 Q. And you never saw this term sheet the  
5 night of the auction?

6 A. I saw a partial screenshot of it, but I  
7 didn't see the actual physical term sheet.

8 Q. Was this bid accepted by the debtor?

9 A. Well, this bid was subject to, in  
10 conjunction with RockItCoin's bid. So the way  
11 Enigma went down is very simple. And we have e-mail  
12 correspondence, if you'd like to review it, Andrew.  
13 And you sent me an e-mail the night before, on  
14 June 1st. "You," Enigma, said that we might -- we  
15 might be credit bidding here. We intend to. We did  
16 not like the choice of the Heller bid and the  
17 Genesis bid, which is really interesting because you  
18 didn't object to the APA and the final sale. But  
19 we'll leave that on the record, that that was --  
20 already been approved and you did not object.

21 So you guys then, the next day, had --  
22 we were willing to accept all -- every and all bids.  
23 We -- RockItCoin came back with a revised offer.  
24 That revised offer came to us and included Enigma.  
25 You were very clear in an e-mail that your bid was

1 intended to be stapled to RockItCoin's, correct?  
2 And we accepted it and we considered it, and then  
3 RockItCoin came in and pulled out. They did not  
4 like that certain employees were no longer at the  
5 firm and said this violated something that they  
6 thought was important in terms of running the  
7 software. So, thus, both bids kind of went away at  
8 that particular moment in time.

9 Q. You seem pretty defensive about this.

10 A. Not defensive, I'm just factual.

11 Q. Okay. So the reason why it wasn't  
12 accepted is because, you would say, a fundamental  
13 assumption of this bid didn't turn out to be true?

14 MR. MANN: Objection to form.

15 THE WITNESS: That's not what I would  
16 say at all.

17 BY MR. KISSNER:

18 Q. What would you say?

19 A. I would say that your bid was stapled to  
20 RockItCoin's and RockItCoin withdrew their offer.  
21 Simple.

22 Q. Sure.

23 And this was a credit bid, right?

24 A. It was.

25 Q. If Enigma's credit bid had been

1 accepted, would Province had earned a transaction  
2 fee on the sale?

3 MR. MANN: Objection to form.

4 THE WITNESS: We would not.

5 BY MR. KISSNER:

6 Q. Okay.

7 A. We did offer you the ability to credit  
8 bid still. We offered you and we offered Michael  
9 the ability to credit bid.

10 Q. Who's Michael?

11 A. He's the CEO of Enigma.

12 Q. Michael Halimi?

13 A. Yes.

14 And you turned us down.

15 Q. Okay.

16 A. So we have kept every option open  
17 multiple times during this process.

18 Q. And who eventually won the auction?

19 A. The Heller/Genesis combination.

20 Q. And why were they selected as the  
21 winner?

22 A. Our view is they provided the best  
23 outcome to the estate and all creditors.

24 Q. And before, we were talking about this  
25 idea of highest and best, do you remember that?

1 A. Uh-huh.

2 Q. Did you think that the Heller/Genesis  
3 Coin joint bid was the highest and best?

4 A. It was.

5 Q. Why is that?

6 A. Number one is they had no diligence  
7 outs. The company was in operational disarray. We  
8 had massive operational problems. There was no  
9 other party that did not have diligence outs.

10 Q. Anything else?

11 A. No. That was the largest -- on a  
12 comparative basis that was a large consideration.

13 Number two, at the time of picking  
14 Heller at the end, we had no other bids that didn't  
15 have any diligence outs. So a big condition here is  
16 the operational disarray of the company and getting  
17 the closing. And that came to fruition, even more  
18 so than it was before, a week later, when OptConnect  
19 turned us off.

20 Q. Was one of the factors considered by the  
21 debtor the likely closing timeline?

22 A. Sure.

23 Q. Was that a factor that was favorable for  
24 Heller?

25 A. Heller had an easier close because they



1 didn't have the same diligence clause.

2 Q. Do you recall if you had an expectation  
3 of about how long the Heller sale would take to  
4 close, at the time of the auction?

5 A. We did, but I don't remember the exact  
6 time line.

7 Q. Was it more than a day?

8 A. It was more than a day, yes.

9 Q. More than a week?

10 A. I'm not going to opine anymore, because  
11 I have -- I don't recall.

12 Q. More than a day.

13 Less than a month?

14 A. I just don't recall, so.

15 Q. Less than a year?

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. And what was the purchase price that was  
19 paid by -- strike that.

20 We were talking before about how the  
21 winning bid was a joint bid, Heller and Genesis  
22 Coin, represented by the same people, negotiated by  
23 the same people, we should consider them together.  
24 So how much was that joint bid?

25 MR. MANN: Objection to form.

1 THE WITNESS: 5.7.

2 BY MR. KISSNER:

3 Q. Okay. Did that bid have an allocation  
4 between various components?

5 A. It did.

6 Q. Could you describe that to me?

7 A. It was 2 million originally for the  
8 software, and the difference, 3.7, I guess it is,  
9 for the assets.

10 Q. And then -- well, you said originally it  
11 was one thing. Presumably that means a change?

12 A. It did. We had a meeting with Enigma,  
13 and you were on that phone call where we gave you a  
14 choice. Heller was going to buy all the assets and  
15 the software irrespective of what Enigma would like  
16 to do on a credit bid side. We gave you a very  
17 clear choice of, you're more than welcome to credit  
18 bid for those assets and Heller will buy the rest  
19 and we'll adjust a pro-rata purchase price, or you  
20 offer us -- -- or you decide that you'd like this  
21 bid. Your CEO asked us for 500,000 from --  
22 allocation away from the software to the assets. We  
23 told you that we can't do that, but we will take it  
24 back to the client, to the buyer. And you asked for  
25 a discussion with him. You had that discussion. He

1       went and said he'd consider it. And he made a  
2       decision based on your conversation to do that  
3       allocation.

4           Q.       When you say "he," you're referring to  
5       whom?

6           A.       George and his representatives.

7           Q.       And George was the principal at Heller?

8           A.       Heller and Genesis, the person who was  
9       the third party we were negotiating with.

10          Q.       And was that conversation with George,  
11       was that between Michael and George, or were you  
12       involved in that?

13          A.       I was just -- I was on the call myself,  
14       Zach Williams from Fox -- I was on the phone, you  
15       were on the phone, Michael was on the phone, George  
16       was on the phone. I don't know of any other party  
17       because I couldn't see the screen, based on being on  
18       my phone. But those were generally the  
19       conversations and those conversations went between  
20       Michael and George.

21          Q.       And you were a fly on the wall,  
22       basically?

23          A.       As were you.

24          Q.       Do you know how long it eventually took  
25       for the Heller sale to close?

1           A.           Final close date on the Heller sale was  
2       July 21st.

3           Q.           And the auction was June 2nd?

4           A.           Correct.

5           Q.           So a month and a half?

6           A.           Absolutely.

7           Q.           Do you think that was more or less than  
8       what your expectation had been at the time, if you  
9       can recall?

10          A.           I think it was more than the  
11       expectation. The -- Heller offered to pay us  
12       250,000 for the estate, for the negative operating  
13       expenses that it would cost us to keep -- to close  
14       later. So they actually paid consideration for an  
15       extension of the timeline because we had to keep  
16       certain things up and running that we would normally  
17       have shut down, by that point, to save the estate  
18       money.

19          Q.           And that increase in consideration, that  
20       went to fund ongoing expenses of the debtor?

21          A.           Correct.

22          Q.           Administrative expenses maybe, we could  
23       call them?

24          A.           I would call them operational expenses.

25          Q.           But not payments to creditors, right?

1 A. No. No payments to creditors, no  
2 payments to advisors. It was literally just  
3 payroll, things that they needed done.

4 Q. And you said that incremental  
5 consideration was 250,000?

6 A. 75,000 up front and a 175,000 the day of  
7 close, as you can reference in the APA.

8 Q. And so after accounting for that, the  
9 top line consideration would have been  
10 \$5.95 million?

11 A. If you add the 250 to the 5.7.

12 Q. Do you know how much was actually paid  
13 by Heller at close?

14 A. There was a ten percent reduction to the  
15 purchase price.

16 Q. Okay. So less than 5.7 plus?

17 A. Correct.

18 Q. Okay. Do you have an understanding as  
19 to why that happened?

20 A. I do.

21 Q. Can you describe it?

22 A. There was a clause in the APA that  
23 basically said that in -- correct me if you have it  
24 in front of you and I don't -- that if five percent  
25 of the machines were not found in the warehouse or

1 ten percent were damaged, then they would have a  
2 ten percent reduction in purchase price.

3 Q. Do you think that Heller was entitled to  
4 reduce the purchase price?

5 A. I did not perform the analysis on the  
6 reduction in purchase price.

7 Q. Do you know who did, if anybody?

8 A. It was the Fox team, and I'm sure  
9 Province too.

10 Q. Do you know who at Province would know  
11 more about this?

12 A. My guess, Tanner, Tanner James.

13 Q. Shame that we did this today. I could  
14 have asked him about it.

15 Okay. So they were entitled -- your  
16 understanding or recollection is that Heller was  
17 entitled to reduce the purchase price if a certain  
18 percentage of machines were damaged, right?

19 A. Either damaged or not in the warehouse.

20 MR. KISSNER: Could we go to Tab 43.

21 And we'll mark that as 21.

22 (Exhibit 21 marked.)

23 MR. KISSNER: And this one -- this is  
24 the electronic, Danny, on the laptop.

25 ///

1 BY MR. KISSNER:

2 Q. So we have Tab 43, Exhibit 21. Do you  
3 recognize this document, Mr. Moses?

4 A. I have seen this e-mail.

5 Q. Could you describe it to me?

6 A. This is the initial -- or maybe the  
7 forwarded e-mail, that initially went from Heller to  
8 Fox Rothschild, that was forwarded out to the  
9 consultation parties, if I remember correctly, and I  
10 was cc'd on it, not directly sent to me.

11 Q. Okay. But you've seen it before?

12 A. I have seen this e-mail, yes.

13 Q. Can you turn to page 2 of the e-mail.

14 A. I am.

15 Q. And you do see the paragraph that starts  
16 with the word "given"? It's the third from the  
17 bottom.

18 A. I do.

19 Q. Could you just read those two sentences  
20 for me?

21 A. "Given that the number of DCMs in the  
22 warehouse varies by more than 5 percent of those  
23 identified on schedule 2.1(a), the ten percent  
24 reduction of purchase price is applicable. Further,  
25 even if we were to include the additional DCMs found

1 in this one warehouse, over ten percent of DCMs are  
2 not in working condition."

3 Q. So do you understand that to mean that  
4 Heller was alleging that more than ten percent of  
5 the purchased DCMs were not in working condition?

6 A. Heller is alleging that they have  
7 satisfied the clause that allows them to have a ten  
8 percent purchase price.

9 Q. Okay. And you said that Mr. James would  
10 have been the one who analyzed that at Province?

11 A. It was likely them and Fox, Fox  
12 Rothschild.

13 Q. Okay.

14 A. I do not -- I have not looked at  
15 schedule 2.1.

16 Q. Okay. Why don't we look at the  
17 attachment to Tab 43, which is the Excel up in front  
18 of you, which -- I don't know if we need to mark  
19 this separately.

20 MR. KISSNER: We can make it Exhibit 22,  
21 if you want.

22 So we'll make this Exhibit 22. And it  
23 was produced in native format and I think everybody  
24 on the Zoom should have a copy, but if not, feel  
25 free to reach out.



1 It's the attachment to 43.

2 (Exhibit 22 marked.)

3 BY MR. KISSNER:

4 Q. And let me know when you're ready,  
5 Mr. Moses.

6 A. I am ready.

7 Q. Do you recognize this document?

8 A. I have not looked at this spreadsheet  
9 before.

10 Q. Do you understand this to be the  
11 spreadsheet that was attached to the e-mail that we  
12 were just reviewing?

13 A. I did not look at the spreadsheet  
14 attached to the e-mail, so I do not have any  
15 knowledge of this spreadsheet.

16 Q. Do you have any reason to believe this  
17 wasn't the spreadsheet attached to the e-mail we  
18 were just look at?

19 A. I don't have no reason to believe or not  
20 believe.

21 Q. Would you rely on my representation that  
22 it is the spreadsheet attached to this e-mail, even  
23 if you don't have actual knowledge?

24 A. I will not -- I will reserve -- I would  
25 reserve all rights then.

1 Q. Is there somebody at Province that you  
2 think would probably know about this spreadsheet?

3 A. I don't know who actually prepared it.

4 Q. Okay.

5 A. There could be -- there were probably  
6 other people in Province who knows about this, but I  
7 don't know who was the actual preparer, personally.  
8 I just don't want to assume.

9 Q. That's fair.

10 Do you think Mr. James might know more  
11 about this spreadsheet? I'm sorry if I asked that  
12 before.

13 A. You've asked that before.

14 Q. Okay. But he might?

15 A. I am not going to opine, but my guess is  
16 there is another person in Province who helped Fox  
17 prepare this spreadsheet.

18 Q. Who helped Fox prepare this spreadsheet  
19 or --

20 A. I don't actually know where this  
21 spreadsheet came from. Like I said, I've never seen  
22 this before. I don't know if this came from  
23 Province. I don't know if it came from Heller. I  
24 don't know anything about this, so there's not -- I  
25 can't be of any service for you on this spreadsheet.

1 Q. On Exhibit 21, that e-mail, do you see  
2 that there's a list, like a numbered list? Do you  
3 see the sentence above it that started with "we  
4 have"?

5 A. Will you explain where you're looking?

6 MR. MANN: (Indicating.)

7 THE WITNESS: Okay.

8 BY MR. KISSNER:

9 Q. Does that refresh your recollection as  
10 to who created this spreadsheet?

11 A. My assumption is that we have attached,  
12 but I don't know where the original core base of  
13 this spreadsheet came from. But my assumption is --  
14 usually a "we" in a statement means it came from  
15 whoever sent the e-mail.

16 Q. And the person who sent it was from  
17 Heller or on behalf of Heller?

18 A. It was.

19 Q. Okay. Let's take a quick --

20 A. But in this particular case it was  
21 forwarded from Zach.

22 Q. Okay. Understood.

23 Let's take a quick break and go off the  
24 record. Let me just make sure we have everything we  
25 need and then we can go on the record and hopefully

1 all go home.

2 (A recess is taken.)

3 MR. KISSNER: Back on the record.

4 Thanks, Mr. Moses. I think that's all  
5 the questions that I have for you today. As we  
6 discussed off the record, there were a few topics  
7 that you do not have knowledge of, specifically  
8 pertaining to DCMs in Brazil and then the Heller  
9 spreadsheet that under -- that related to the  
10 purchase price adjustment. We're going to meet and  
11 confer with your counsel and come to a resolution on  
12 that.

13 And then I believe that debtor's counsel  
14 had something to state on the record.

15 MR. MANN: Just that preserve our right  
16 for errata, and when we get a copy of the transcript  
17 we can review it and make any corrections that are  
18 deemed necessary.

19

20 (The deposition concluded at 3:30 p.m.)

21 -oOo-

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## 1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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\* \* \* \* \*

15 I, DANIEL MOSES, deponent herein, do hereby  
16 certify and declare the within and foregoing  
17 transcription to be my deposition in said action;  
18 that I have read, corrected and do hereby affix my  
19 signature to said deposition under penalty of  
20 perjury.

18

\_\_\_\_\_  
DANIEL MOSES, Deponent

19

20

21

22

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25

## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
 ) SS:  
3 COUNTY OF CLARK )

4

5 I, Karen L. Jones, a duly commissioned and  
6 licensed Court Reporter, Clark County, State of  
7 Nevada, do hereby certify: That I reported the  
taking of the deposition of the witness, DANIEL  
8 MOSES, commencing on Wednesday, August 23, 2023 at  
10:00 a.m.

8

9 That prior to being examined, the witness was,  
10 by me, duly sworn to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript of  
said deposition is a complete, true and accurate  
12 transcription of said shorthand notes.

12

13 I further certify that (1) I am not a relative  
or employee of an attorney or counsel of any of the  
14 parties, nor a relative or employee of an attorney  
or counsel involved in said action, nor a person  
15 financially interested in the action; nor do I have  
any other relationship with any of the parties or  
16 with counsel of any of the parties involved in the  
action that may reasonably cause my impartiality to  
17 be questioned; and (2) that transcript review  
pursuant to NRCP 30(e) was requested.

18

19

20 IN WITNESS HEREOF, I have hereunto set my  
hand, in my office, in the County of Clark, State of  
21 Nevada, this 4th day of September, 2023.

22

*Karen L. Jones*

23

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KAREN L. JONES, CCR NO. 6944

24

25

Daniel Moses

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In re: Cash Cloud Inc.

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